

**CITY OF NEWPORT BEACH
PLANNING COMMISSION STAFF REPORT**

July 19, 2012
Agenda Item 5

SUBJECT: Wireless Telecommunications Facilities Ordinance (PA2012-057)
• Code Amendment No. 2012-004

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PROJECT SUMMARY

An amendment to the Newport Beach Municipal Code (“NBMC”) to update regulations regarding wireless telecommunication facilities (“telecom facilities”). Regulations currently contained in Chapter 15.70 would be updated and relocated to Title 20 (Planning and Zoning). Chapter 15.70 would be rescinded in its entirety.

RECOMMENDED ACTION

- 1) Conduct a public hearing; and
- 2) Adopt Resolution No. ____ (Attachment No. PC 1) recommending that City Council approve an amendment to the NBMC to update regulations regarding telecom facilities, and consolidate all provisions currently contained in Title 13 (Streets, Sidewalks and Public Property) and Title 15 (Buildings and Construction) within a proposed new chapter in Title 20 (Chapter 20.49 Wireless Telecommunications Facilities); and repeal Chapter 15.70 in its entirety.

INTRODUCTION

Project Description

The proposed code amendment is a comprehensive update to the existing Wireless Telecommunications Facilities Ordinance (the telecom ordinance). The amendment is intended to balance the needs of the community and the increasing demand for wireless networks, while mitigating the impact of telecom facilities in the community through effective design and screening techniques. The proposed amendment is also intended to reflect changes in federal and state law.

Currently, provisions regulating telecom facilities are contained in Chapter 15.70, as well as Chapter 13.20 (Public Rights-of-Way) that regulates installations in the public right-of-way. While no changes will be made to Chapter 13.20, the proposed update would consolidate all provisions regulating telecom facilities into a new chapter in the Zoning Code and new or modified telecom facilities would be regulated as land uses.

Background

The current regulations for telecom facilities were adopted by City Council in October 2002. Prior to that time, all telecom facilities were processed as a ministerial project through a building permit application. At the time Chapter 15.70 was adopted, state and federal case law suggested cities were somewhat limited in how telecom facilities could be regulated. More recent case law favors more appropriate local control to ensure the compatibility of telecom facilities with surrounding land uses. The typical land use evaluation process by local jurisdictions through the Zoning Code is also supported by current case law and it is a process commonly used today.

The City's existing telecom ordinance does not reflect current case law, and it has not been updated to reflect new industry practices, changes in federal law or changes in state law since its adoption in 2002. Under the existing regulations, all applications for a telecom facility are reviewed by the "Planning Director" (now considered the Community Development Director) as a "telecom permit" to determine if the proposed facility conforms to the technology, height, location and design standards of the code. The Community Development Director is designated as the review authority for proposed telecom facilities that meet established criteria. The City Council is the review authority for telecom facilities that do not conform to the height, location and/or design standards, and for facilities that are more noticeable and aesthetically conspicuous (such as a false tree, monopole, or lattice tower). Neither review process requires a public notice or a public hearing.

At the March 27, 2012, City Council Study Session, staff presented an overview of the existing telecom ordinance, and identified sections that could be updated to reflect current case law, as well as areas of the code that could be improved based upon staff's experience with applying existing regulations. Staff proposed that the telecom ordinance be updated to address a variety of identified issues, and that all regulations related to telecom facilities be consolidated into the Zoning Code. At the conclusion of the study session, City Council requested staff to proceed with revisions to the telecom ordinance as recommended.

Federal Law and Radio Frequency Emissions Safety

In 1996, the U.S. Congress added a section to the Communications Act of 1934 to promote the expansion of personal wireless communications service, adding Section 332(c)(7). This section preserves local zoning authority over the "placement, construction, and modification of personal wireless service facilities," while imposing certain federal requirements. Specifically, Section 332(c)(7) requires that state or local government decisions regarding telecom facilities shall not:

- a. Unreasonably discriminate among providers of functionally equivalent services;
or
- b. Prohibit or have the effect of prohibiting the provision of personal wireless services; or

- c. Regulate the placement, construction, and modification of personal wireless facilities on the basis of the environmental effects of radio frequency (RF) emissions to the extent that such facilities comply with the Federal Communications Commission's (FCC) regulations concerning such emissions.

Congress has delegated sole national authority to the FCC to set radio frequency standards in the United States. While federal law prohibits a City from setting its own RF emissions safety standards (or even adopting the FCC's standards as its own), it does permit a City to determine whether a proposed telecom facility meets applicable FCC regulations. Once the review authority is satisfied that the RF emissions of a proposed telecom facility are within the federal thresholds, a City's review of a proposed project can only be based on applicable zoning criteria as set forth in local ordinances.

DISCUSSION

The following discussion highlights the key issues with the existing telecom ordinance, and the proposed revision in the draft ordinance to address these issues.

1. Public Notice/Public Hearing Process and Review Authority

- a. *Existing Provisions:* The current regulations do not provide a process or requirement for public notices or public hearings for telecom permit applications. The Community Development Director is the review authority for telecom facilities that conform to the requirements of the code, and notices of a public meeting are only mailed when a special review is required by City Council for larger, more conspicuous types of telecom facilities (e.g., a false tree, monopole, or lattice tower), or a facility proposed to be located in certain residential zoning districts.
- b. *Proposed Revision:* The draft ordinance requires that all applicants for a proposed telecom facility must apply for a Minor Use Permit, Conditional Use Permit, or Limited Term Permit, depending on the location, design, method of installation, and duration of a proposed telecom facility. All applications would require a public notice and public hearing¹ consistent with provisions in the Zoning Code, and the Zoning Administrator or Planning Commission is the designated review authority. This proposed revision would provide for public input through the public hearing process.

2. Appeal Process

- a. *Existing Provisions:* Currently, only the applicant may appeal a decision on a telecom permit application reviewed by the Community Development Director.

¹ Applications for a Limited Term Permit for a facility proposed to operate less than 90 days do not require a public hearing.

- b. *Proposed Revision:* The draft ordinance includes an appeal process that is consistent with the Zoning Code, which would allow any interested party to initiate an appeal. Decisions of the Zoning Administrator may be appealed to the Planning Commission, and decisions of the Planning Commission may be appealed to the City Council, consistent with the City's current practice for other types of development applications.

3. Installations in the Public Right-of-Way

- a. *Existing Provisions:* The existing code does not provide specific procedures for applications to install a telecom facility in the public right-of-way.
- b. *Proposed Revision:* The draft ordinance includes a process, design standards and criteria for the installation of telecom facilities in the public right-of-way, consistent with procedures for installations on private property (i.e. public hearings would be conducted, and a ministerial encroachment permit would still be required).

4. Design Standards and Criteria

- a. *Existing Provisions:* Existing design standards do not reflect changes in technology, and do not effectively encourage telecom facilities to be camouflaged or designed to look as inconspicuous as possible.
- b. *Proposed Revision:* The design standards have been updated to reflect technological changes. Design criteria have been included to encourage camouflage design techniques based on the method of installation. Proposed telecom facilities that are designed to make the installation, operations and appearance of the facility as inconspicuous as possible and visually compatible with the surrounding area are subject to public review before the Zoning Administrator, whereas telecom facilities that are more visually conspicuous are subject to public review before the Planning Commission.

5. Deviation to Height Limitations and Location Requirements

- a. *Existing Provisions:* The existing ordinance does not provide a process for a project proponent to request to modify or deviate from the allowed height limits or prohibited location requirements.
- b. *Proposed Revision:* By placing regulations for telecom facilities in the Zoning Code, a project proponent seeking to exceed the height requirement could submit a Variance application. Such an application would be processed no differently than other Variance applications and a public hearing before the Planning Commission would result.

6. Setback Requirements

- a. *Existing Provisions:* The existing ordinance requires that setbacks be measured from the part of the telecom facility closest to the applicable lot line or structure, and prohibits the location of a telecom facility within any required setback established by the Zoning Code, unless given special approval by the City Council.

Proposed Revision: The setback requirements in the draft ordinance have been updated to provide an additional setback or “fall zone” for ground-mounted “wireless towers”² for safety purposes in the event of involuntary damage where the “wireless tower” topples or falls over. The new required setback would be the greater distance of either the required setback established in the Zoning Code, or 110 percent (110%) of the height of the “wireless tower,” unless the review authority determines a smaller setback is appropriate. For an example, in a nonresidential district where the required setback is five feet and a freestanding “wireless tower” is proposed to be 25 feet in height, the “wireless tower” must be set back a minimum of 27.5 feet from the property line.

7. Modification of Existing Telecom Facilities

- a. *Existing Provisions:* The existing ordinance includes provisions which allows the City to review and modify a telecom permit based on “changed circumstances” such as an increase in the height or size of any part of the facility; additional impairment of the views from surrounding properties, an increase in size or change in shape of the antenna or supporting structure; change in color or materials; change in location; or increase in signal output above permissible exposure limits established by FCC guidelines.
- b. *Proposed Revision:* The draft ordinance includes regulations consistent with new federal law³ regarding the operation and modification of existing telecom facilities. Criteria is included in the draft ordinance establishing what constitutes a substantial change to an existing telecom facility, including increasing or decreasing by five percent (5%) or more the height, width, or depth in any direction of any portion of the existing “wireless tower” or “base station.” When modifications to the physical dimensions of an existing telecom facility are less than five percent (5%), the proposed modifications would be subject to ministerial review and approval (e.g. a building permit or encroachment permit). Changes to an existing telecom facility that are five percent (5%) or more would be considered a substantial change and shall require the processing of a new discretionary permit application consistent with the provisions of the draft ordinance. The five percent (5%) threshold is proposed to minimize aesthetic impacts and protect public views in the community.

² “Wireless towers” are defined in the draft telecom ordinance as “any structure built for the sole or primary purpose of supporting antennas used to provide wireless services authorized by the FCC.”

³ Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 regarding deployment of telecom facilities was signed into effect February 22, 2012.

8. Zoning District Land Uses and Permit Requirements

In addition to amending the Zoning Code to add the proposed new Chapter 20.49, the allowed uses and permit requirement tables in the following sections would be updated to reflect the zoning districts in which telecom facilities are allowed and the permit required to establish the telecom facility.

Section 20.18.020	Residential Zoning Districts Land Uses and Permit Requirements
Section 20.20.020	Commercial Zoning Districts Land Uses and Permit Requirements
Section 20.22.020	Mixed-Use Zoning Districts Land Uses and Permit Requirements
Section 20.24.020	Industrial Zoning Districts Land Uses and Permit Requirements
Section 20.26.020	Special Purpose Zoning Districts Land Uses and Permit Requirements

Under the existing and proposed telecom ordinance, telecom facilities are allowed in all commercial, mixed-use, and industrial zoning districts, as well as on properties zoned for public facilities, private institutions, and active public or private recreational uses.

- a. *Existing Provisions:* Under the existing telecom ordinance, telecom facilities are prohibited in the following locations unless given special approval by City Council: “on common area lots or other non-residential lots within residential districts; within any required setback established in the Zoning Code; or, on multifamily structures on lots zoned MFR.” Telecom facilities are prohibited on “residential lots⁴” and in the “Open Space-Passive (OSP) zoning district, unless facilities are co-located on an existing utility tower within a utility easement area.”
- b. *Proposed Revision:* “Prohibited Locations” has been updated to prohibit telecom facilities on properties zoned for single-family development, two-family development, or multi-unit residential developments consisting of four dwelling units or less, and to include an exception to allow telecom facilities in an Open Space zoning district when collocated on an existing telecom facility or site (e.g., the Laidlaw Gas Recovery Facility in the Newport Coast area is located on land designated as Open Space, but contains four different telecom facilities). The “General Development and Design Standards” includes a provision that all telecom facilities comply with the required setback established for the zoning district in which the facility is proposed to be located.

The summary above represents the key changes to the draft telecom ordinance and permitted uses of the Zoning Code. Due to the complexity of the changes, a

⁴ Under Section 15.70.030 (Definitions) a “residential lot” means a lot containing, or zoned for, one or more dwelling units in the R-1, R-1.5, R-2, or in the residential portions of the PC or SP Districts.

strikeout/underline version of Chapter 15.70 could not be prepared. For this reason, staff has prepared a table (Attachment No. PC 2) that lists each section of the existing telecom ordinance and the proposed new or modified sections, and provides more detail regarding the proposed changes or additions. A copy of Chapter 15.70, the existing telecom ordinance is attached (Attachment No PC 3), as well as a draft copy of the proposed new telecom ordinance, Chapter 20.49 (Exhibit "A" of the draft Resolution).

Environmental Review

Staff recommends that the Planning Commission adopt the draft resolution recommending that City Council find this code amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the code amendment in and of itself has no potential for resulting in physical changes to the environment, directly or indirectly. Furthermore, each application submitted for a new or modified telecom facility will be reviewed individually to determine if the project is subject to CEQA and requires additional environmental review, or if the project is exempt from CEQA. For these reasons, this code amendment is not subject to CEQA.

Public Notice

Notice of this Planning Commission hearing was provided as a one-eighth page display ad in the Daily Pilot on July 7, 2012, as required by the NBMC and Government Code Section 65091. Notice was also provided on the City's website.

Prepared by:



Janet Johnson Brown
Associate Planner

Submitted by:



Brenda Wisneski, AICP, Deputy Director

ATTACHMENTS

- PC 1 Draft Resolution
- PC 2 Summary of Proposed Changes to Telecom Ordinance
- PC 3 Existing Chapter 15.70

Attachment No. PC 1

Draft Resolution

RESOLUTION NO. ____

**A RESOLUTION OF THE PLANNING COMMISSION OF THE
CITY OF NEWPORT BEACH RECOMMENDING CITY COUNCIL
ADOPTION OF CODE AMENDMENT NO. 2012-004 UPDATING
REGULATIONS FOR WIRELESS TELECOMMUNICATIONS
FACILITIES (PA2012-057)**

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. Chapter 15.70 ("Wireless Telecommunications Facilities") of the Newport Beach Municipal Code ("NBMC") was adopted by the Newport Beach City Council in October 2002, and has not been modified since adoption.
2. At the March 27, 2012, City Council Study Session, the Newport Beach City Council directed staff to prepare revisions to the existing regulations for Wireless Telecommunications Facilities ("Telecom Facilities").
3. City staff has prepared a comprehensive update to the existing regulations for Telecom Facilities, and consolidated all provisions currently contained in Chapter 13.20 (Public Rights-of-Way) and Chapter 15.70 (Wireless Telecommunications Facilities) into a new chapter in the Zoning Code (Chapter 20.49 Wireless Telecommunications Facilities).
4. Chapter 20.66 of the City's Zoning Code requires the Planning Commission to conduct one or more public hearings before making a recommendation to City Council on a proposed zoning code amendment.
5. A public hearing was held on July 19, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

The Planning Commission recommends that the City Council find this code amendment is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because the code amendment in and of itself has no potential for resulting in physical changes to the environment, directly or indirectly. Furthermore, each application submitted for a new or modified Telecom Facility will be reviewed individually to determine if the project is subject to CEQA and requires additional environmental review, or if the project is exempt from CEQA. For these reasons, this code amendment is not subject to CEQA.

SECTION 3. FINDINGS.

1. The code amendment reflects changes in federal and state law enacted since adoption of Chapter 15.70, as well as advances in technology and industry practices.
2. The code amendment includes a requirement for public notices and public hearings that will provide a process where the public will have an opportunity to effectively participate in the review process.
3. The code amendment is intended to balance the needs of the community and the increasing demand for wireless networks, while evaluating the compatibility of a Telecom Facility with surrounding land uses. The regulations and development standards set forth in Chapter 20.49 are intended to mitigate the impact of Telecom Facilities in the community through effective location, design and screening techniques.
4. The code amendment will not constitute a hazard to public convenience, health, interest, safety, or general welfare of the community because the regulations establish effective location, design and operational criteria that are intended to protect the public health in compliance with safety standards established by the Federal Communications Commission ("FCC"), and to improve the aesthetics of Telecom Facilities in the community. The regulations and design standards set forth in Chapter 20.49 are not intended to limit an individual's ability to receive wireless telecommunications services nor create unfair competition among wireless telecommunication service providers.
5. Section 704 of the 1996 Telecommunications Act (47 U.S.C. Section 332(c)) preempts local regulation of the placement, construction, and modification of Telecom Facilities on the basis of the environmental effects of radio frequency emissions to the extent that such Facilities comply with the applicable FCC regulations.
6. Consolidating all regulations and development standards for Telecom Facilities from Chapter 15.70 and Chapter 13.20 of the NBMC into a new chapter in the Zoning Code (Chapter 20.49) will allow for consistent and efficient administration of the code.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

The Planning Commission of the City of Newport Beach hereby recommends that the City Council of the City of Newport Beach approve Code Amendment No. 2012-004 as shown in Exhibit "A" and Exhibit "B," and repeal Chapter 15.70 of the Newport Beach Municipal Code in its entirety.

PASSED, APPROVED AND ADOPTED THIS 19th DAY OF JULY, 2012.

AYES:

NOES:

ABSTAIN:

ABSENT:

BY:_____
Michael Toerge, Chairman

BY:_____
Fred Ameri, Secretary

Brenda Wisneski, AICP, Zoning Administrator

EXHIBIT “A”

Chapter 20.49 – Wireless Telecommunications Facilities

Sections:

- 20.49.010 – Purpose and Intent
- 20.49.020 – General Provisions
- 20.49.030 – Definitions
- 20.49.040 – Available Technology
- 20.49.050 – Location Preferences
- 20.49.060 – General Development and Design Standards
- 20.49.070 – Permit Review Procedures
- 20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals
- 20.49.090 – Agreement for Use of City-owned or City-held Trust Property
- 20.49.100 – Modification of Existing Telecom Facilities
- 20.49.110 – Operational and Radio Frequency Compliance and Emissions Report
- 20.49.120 – Right to Review or Revoke Permit
- 20.49.130 – Removal of Telecom Facilities

20.49.010 – Purpose and Intent.

A. Purpose. The purpose of this Chapter is to provide for wireless telecommunication facilities (“Telecom Facilities”) on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:

1. Encourage the location of Antennas in non-residential areas.
2. Strongly encourage Collocation at new and existing Antenna sites.
3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.

B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 – General Provisions.

A. Applicability. These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.

B. Permit and/or Agreement Required.

1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).

2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices (“OTARD”) rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct “antenna classes.”

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City’s jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters. Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.040 – Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.050 – Location Preferences.

A. Preferred Locations. The following is the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest. Antenna Classes are the Telecom Facilities and their attendant accessory/Support Equipment separated into the following distinct Antenna Classes based on observed aesthetic impacts, as follows:

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a new attached structure that matches or complements the existing exterior surfaces of the building or structure

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/designed to blend in with their surroundings. Typical examples include:

- Antennas mounted inside or behind elements that replicate natural features such as rocks and shrubbery and located in hillsides or other natural areas where the Telecom Facility blends into the surrounding vegetation or topography (e.g. false rocks or shrubbery).
- A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:

1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

D. Collocation Installations.

1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards.

- A. General Criteria.** All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
 2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
 3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
 4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.
- B. Public View Protection.** Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

1. **Maximum Height.** Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:
 - a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
 - b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.
 - c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 *et seq.* (the "U.S. Flag Code").
 - d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
 - e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).
2. **Over-Height Buildings or Structures.** Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to camouflage, disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:

1. For Class 1 (Camouflaged/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
2. For Class 2 (Collocation) Antenna Installations:
 - a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
 - b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.
3. For Class 3 (Visible) Antenna Installations:
 - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

- Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.
- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.
 - c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.
 - d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.
 - e. Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.
4. For Class 4 (Freestanding Structure) Antenna Installations:
- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.
 - b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.
 - c. The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.
5. For Class 5 (Temporary) Antenna Installations:
- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

6. **Support Equipment.** All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:
- a. **Building-Mounted Facilities.** For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - b. **Freestanding Facilities.** For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:
 - Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
 - Shall be screened in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
 - Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.
 - c. **Installations in a Public Right-of-Way.** Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.
- G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.
- H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:
1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
 2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
 3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
 4. All Telecom Facilities shall be kept clean and free of litter.
 5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
 6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

20.49.070 – Permit Review Procedures.

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

- A. Permit Required.** All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

**Table 4-1
Permit Requirements for Telecom Facilities**

Antenna Class	Location of Proposed Telecom Facility		
	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP

Antenna Class	Location of Proposed Telecom Facility		
Class 4 Antenna (a) (c) (Freestanding Structure)	MUP	CUP	CUP
Class 5 Antenna (a) (c) (d) (Temporary)	LTP	LTP	LTP

- (a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.
- (b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).
- (c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.
- (d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).

- B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.** Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.
- C. Fee.** All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.
- D. Review Process.** Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.
- E. Review of Collocated Facilities.** Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).
- F. Emergency Communications Review.** At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference. .

G. Public Notice and Public Hearing Requirements. An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).

H. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities:

1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

- a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
- b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
- c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
- d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.

2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
- b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).

B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

- a. The Collocation of new transmission equipment;
- b. The removal of existing transmission equipment; or
- c. The replacement of existing transmission equipment

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

“Substantially Change the Physical Dimensions” means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

- a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
- b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
- c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
- d. Increasing or decreasing by five percent (5%) or more any of the following:

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

- e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
- f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
- g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
- h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
- i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.

EXHIBIT “B”

Section 20.18.020 Residential Zoning Districts Land Uses and Permit Requirements

Section 20.20.020 Commercial Zoning Districts Land Uses and Permit Requirements

Section 20.22.020 Mixed-Use Zoning Districts Land Uses and Permit Requirements

Section 20.24.020 Industrial Zoning Districts Land Uses and Permit Requirements

Section 20.26.020 Special Purpose Zoning Districts Land Uses and Permit Requirements

A. 20.18.020 Residential Zoning Districts Land Uses and Permit Requirements.

A. Allowed Land Uses.

1. Table 2-1 indicates the uses allowed within each residential zoning district and the permit required to establish the use, if any, in compliance with Part 5 of this title (Planning Permit Procedures).

2. Residential uses represent the primary allowed use, and only those additional uses that are complementary to, and can exist in harmony with, the residential character of each zoning district may be allowed as accessory, conditionally permitted, and/or temporary uses.

B. Prohibited Land Uses. A table cell with “—” means that the listed land use is prohibited in that zoning district.

C. Applicable Regulations. The last column in the table (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-1 ALLOWED USES AND PERMIT REQUIREMENTS	Residential Zoning Districts Permit Requirements * P Permitted by Right CUP Conditional Use Permit (Section 20.52.020) CUP- Conditional Use Permit in Residential Zoning Districts HO (Section 20.52.030) MUP Minor Use Permit (Section 20.52.020) LTP Limited Term Permit (Section 20.52.040) — Not Allowed *				
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	R-A	R-1**	R-BI R-2	RM RMD	Specific Use Regulations
Residential Uses					
Home Occupations	P	P	P	P	Section 20.48.110
Single-Unit Dwellings—Attached	—	—	P	P	Section 20.48.180
Single-Unit Dwellings—Detached	P	P	P	P	Section 20.48.180
Multi-Unit Dwellings	—	—	—	P	
Two-Unit Dwellings	—	—	P	P	Section 20.48.180
Accessory Dwelling Units	MUP	MUP	—	—	

Visitor Accommodations, Residential					
Bed and Breakfast Inns	—	—	CUP-HO	CUP-HO	Section 20.48.060
Short-Term Lodging	—	—	P	P	Chapter 5.95
Care Uses					
Adult Day Care					
Small (6 or fewer)	P	P	P	P	Section 20.48.070
Large (7 to 14)	MUP	MUP	MUP	MUP	Section 20.48.070
Child Day Care					
Small (8 or fewer)	P	P	P	P	Section 20.48.070
Large (9 to 14)	MUP	MUP	MUP	MUP	Section 20.48.070
Day Care, General	—	—	CUP-HO	CUP-HO	
Residential Care Facilities					
Limited (6 or fewer) Licensed	P	P	P	P	Section 20.48.170
Limited (6 or fewer) Unlicensed	—	—	—	CUP-HO	Section 20.48.170
General (7 or more) Licensed	—	—	—	CUP-HO	Section 20.48.170
General (7 or more) Unlicensed	—	—	—	CUP-HO	Section 20.48.170
Integral Facilities/Integral Uses	—	—	—	CUP-HO	Section 20.48.170
Parolee-Probationer Home	—	—	—	—	
Other Uses					
Parking Facility	MUP	MUP	MUP	MUP	
Convalescent Facilities	—	—	—	CUP	
Utilities, Minor	P	P	P	P	
Utilities, Major	CUP	CUP	CUP	CUP	
Wireless Telecommunication Facilities	=	=	=	MUP/CUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities	See Chapter 15.70				
Accessory Structures and Uses	P	P	P	P	
Animal-Keeping	P	P	P	P	Section 20.48.040
Personal Property Sales	P	P	P	P	Section 20.48.150
Special Events	See Chapter 11.03				

Temporary Uses	LTP	LTP	LTP	LTP	Section 20.52.040
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* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as provided by Chapter [20.12](#) (Interpretation of Zoning Code Provisions).

** Includes R-1-6,000, R-1-7,200, and R-1-10,000.

A. 20.20.020 Commercial Zoning Districts Land Uses and Permit Requirements.

A. Allowed Land Uses. Tables 2-4 and 2-5 indicate the uses allowed within each zoning district and the permit required to establish the use, if any, in compliance with Part 5 of this title (Planning Permit Procedures).

B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.

C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-4 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Office Zoning Districts Permit Requirements *				
	P	Permitted by Right			
	CUP	Conditional Use Permit (Section 20.52.020)			
	MUP	Minor Use Permit (Section 20.52.020)			
	LTP	Limited Term Permit (Section 20.52.040)			
	—	Not allowed *			
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	OA	OG	OM	OR	Specific Use Regulations
Industry, Manufacturing and Processing, and Warehousing Uses					
Handicraft Industry	P	—	—	—	
Industry, Small (less than 5,000 sq. ft.)	MUP	—	—	—	
Personal Storage (mini storage)	P	—	—	—	
Research and Development, General	P	P	P	P	
Research and Development, Restricted	MUP	MUP	MUP	MUP	
Recreation, Education, and Public Assembly Uses					
Assembly/Meeting Facilities					

Small—5,000 sq. ft. or less (religious assembly may be larger than 5,000 sq. ft.)	CUP	CUP	CUP	CUP	
Commercial Recreation and Entertainment	—	—	—	CUP	
Cultural Institutions	P	—	—	P	
Schools, Public and Private	CUP	CUP	—	CUP	
Schools, Related to Medical Professions	MUP	MUP	MUP	MUP	
Retail Trade Uses					
Alcohol Sales (off-sale)	MUP	MUP	MUP	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	MUP	MUP	P	
Retail Sales (less than 10,000 sq. ft.)	MUP	P	P	P	
Retail Sales (10,000 sq. ft. or greater)	CUP	—	—	—	
Pharmacy, Medical Supplies	P	P	P	P	
Service Uses—Business, Financial, Medical, and Professional					
ATM	P	P	P	P	
Convalescent Facilities	—	—	P	—	
Emergency Health Facilities/Urgent Care	P	P	P	P	
Financial Institutions and Related Services	P	P	P	P	
Hospitals	—	—	CUP	—	
Offices—Business	P	P	P	P	
Offices—Corporate	P	P	—	P	
Offices—Medical and Dental	P	P	P	P	
Offices—Professional	P	P	P	P	
Outpatient Surgery Facility	P	P	P	P	
Service Uses—General					
Ambulance Services	P	—	P	—	

Animal Sales and Services					
Animal Boarding/Kennels	P	—	—	CUP	Section 20.48.050
Animal Grooming	P	MUP	—	MUP	Section 20.48.050
Veterinary Services	P	CUP	CUP	CUP	Section 20.48.050
Artists' Studios	P	P	—	P	
Catering Services	P	P	—	P	
Day Care—General	MUP	MUP	MUP	MUP	
Eating and Drinking Establishments					
Accessory Food Service (open to public)	P	P	P	P	Section 20.48.090
Bars, Lounges, and Nightclubs	CUP	—	—	CUP	Section 20.48.090
Fast Food (no late hours) (1)(2)	P/MUP	P/MUP	—	—	Section 20.48.090
Fast Food (with late hours) (1)	MUP	MUP	—	—	Section 20.48.090
Food Service (no alcohol, no late hours) (1)(2)	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Food Service (no late hours) (1)	MUP	MUP	MUP	MUP	Section 20.48.090
Food Service (with late hours) (1)	CUP	CUP	CUP	CUP	Section 20.48.090
Take-Out Service, Limited (2)	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Emergency Shelters	P	—	—	—	Section 20.48.100
Funeral Homes and Mortuaries, without crematorium	MUP	MUP	MUP	MUP	
Funeral Homes and Mortuaries, with crematorium	CUP	CUP	CUP	CUP	
Health/Fitness Facilities					
Small—2,000 sq. ft. or less	P	P	P	P	
Large—Over 2,000 sq. ft.	MUP	MUP	MUP	MUP	
Laboratories	P	P	P	P	
Maintenance and Repair Services	P	P	—	P	
Massage Establishments	MUP	MUP	MUP	MUP	Chapter 5.50 Section 20.48.120
Massage Services, Accessory	MUP	MUP	MUP	MUP	Section 20.48.120
Personal Services, General	P	P	P	P	

Personal Services, Restricted	MUP	MUP	MUP	MUP	
Postal Services	P	P	P	P	
Printing and Duplicating Services	P	P	P	P	
Smoking Lounges	—	—	—	—	
Visitor Accommodations, Nonresidential					
Hotels, Motels, and Time Shares	CUP	—	CUP	—	
Transportation, Communications, and Infrastructure Uses					
Communication Facilities	P	P	—	P	
Heliports and Helistops (3)	CUP	—	CUP	CUP	
Parking Facilities	MUP	MUP	MUP	MUP	
Parking Structures, adjacent to residential district	—	CUP	CUP	—	
Utilities, Minor	P	P	P	P	
Utilities, Major	CUP	CUP	CUP	CUP	
Wireless Telecommunication Facilities	CUP/MUP/LTP	CUP/MUP/LTP	CUP/MUP/LTP	CUP/MUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities	Chapter 15.70				
Vehicle Rental, Sale, and Service Uses					
Vehicle Sales, Office Only	P	P	—	P	
Vehicle/Equipment Rentals					
Office Only	P	P	—	P	
Vehicles for Hire	CUP	—	—	—	
Vehicle/Equipment Rentals and Sales	CUP	—	—	—	
Vehicle/Equipment Repair					
General	CUP	—	—	—	
Limited	MUP	—	—	—	
Vehicle/Equipment Services					
Automobile Washing/Detailing, self-service or accessory	MUP	MUP	—	MUP	
Service Stations	CUP	—	—	—	Section 20.48.210

Other Uses					
Accessory Structures and Uses	P	P	P	P	
Drive-Through Facilities	MUP	MUP	MUP	MUP	Section 20.48.080
Outdoor Storage and Display	P	P	P	P	Section 20.48.140
Special Events	Chapter 11.03				
Temporary Uses	LTP	LTP	LTP	LTP	Section 20.52.040

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district are not allowed, except as otherwise provided by Section [20.12.020](#) (Rules of Interpretation).

(1) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public past 11:00 p.m. any day of the week.

(2) Permitted or Minor Use Permit Required.

a. A minor use permit shall be required for any use located within five hundred (500) feet, property line to property line, of any residential zoning district.

b. A minor use permit shall be required for any use that maintains late hours.

(3) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.

TABLE 2-5 ALLOWED USES AND PERMIT REQUIREMENTS	Commercial Retail Zoning Districts					
	Permit Requirements *					
	<p>P Permitted by Right</p> <p>CUP Conditional Use Permit (Section 20.52.020)</p> <p>MUP Minor Use Permit (Section 20.52.020)</p> <p>LTP Limited Term Permit (Section 20.52.040)</p> <p>— Not allowed *</p>					
Land Use						
See Part 7 of this title for land use definitions.	CC	CG	CM	CN	CV	Specific Use Regulations

See Chapter 20.12 for unlisted uses.						
Industry, Manufacturing and Processing, and Warehousing Uses						
Handicraft Industry	P	P	P	P	P	
Recreation, Education, and Public Assembly Uses						
Assembly/Meeting Facilities	CUP	CUP	CUP	CUP	CUP	
Commercial Recreation and Entertainment	CUP	CUP	CUP	CUP	CUP	
Cultural Institutions	P	P	MUP	—	P	
Schools, Public and Private	—	CUP	CUP	CUP	CUP	
Retail Trade Uses						
Alcohol Sales (off- sale)	MUP	MUP	MUP	MUP	MUP	Section 20.48.030
Alcohol Sales (off- sale), Accessory Only	P	P	P	P	P	
Bulk merchandise	—	P	—	P	—	
Marine Rentals and Sales						
Boat Rentals and Sales	—	CUP	CUP	—	CUP	
Marine Retail Sales	P	P	P	—	P	
Retail Sales	P	P	P	P	—	
Visitor-Serving Retail	P	—	—	—	P	
Service Uses—Business, Financial, Medical, and Professional						
ATM	P	P	P	P	P	
Emergency Health Facility/Urgent Care (above 1st floor only)	MUP	MUP	—	—	MUP	
Financial Institutions	P	P	—	P	P	

and Related Services						
Offices—Corporate (above 1st floor only)	P	P	P	P	—	
Offices—Business	P	P	P	P	P	
Offices—Medical and Dental	P	P	—	P	P	
Offices— Professional (above 1st floor only)	P	P	P	P	P	
Outpatient Surgery Facility (above 1st floor only)	MUP	MUP	P	—	—	
Service Uses—General						
Ambulance Services	—	MUP	—	—	—	
Animal Sales and Services						
Animal Boarding/Kennels	CUP	CUP	—	CUP	—	Section 20.48.050
Animal Grooming	P	P	—	P	P	Section 20.48.050
Animal Retail Sales	P	P	—	P	P	Section 20.48.050
Veterinary Services	CUP	CUP	—	CUP	—	Section 20.48.050
Artists' Studios	P	P	P	P	P	
Catering Services	—	P	P	P	P	
Day Care, General	MUP	MUP	—	MUP	MUP	
Eating and Drinking Establishments						
Accessory Food Service (open to public)	P	P	P	P	P	Section 20.48.090
Bars, Lounges, and Nightclubs	CUP	CUP	CUP	CUP	CUP	Section 20.48.090
Fast Food (no late hours) (1)(2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Fast Food (with	MUP	MUP	MUP	MUP	MUP	Section

late hours) (1)						20.48.090
Food Service (no alcohol, no late hours) (1)(2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Food Service (no late hours) (1)	MUP	MUP	MUP	MUP	MUP	Section 20.48.090
Food Service (with late hours) (1)	CUP	CUP	CUP	CUP	CUP	Section 20.48.090
Take-Out Service, Limited (2)	P/MUP	P/MUP	P/MUP	P/MUP	P/MUP	Section 20.48.090
Funeral Homes and Mortuaries, without crematorium	—	MUP	—	—	—	
Funeral Homes and Mortuaries, with crematorium	—	CUP	—	—	—	
Health/Fitness Facilities						
Small—2,000 sq. ft. or less	P	P	P	P	P	
Large—Over 2,000 sq. ft.	MUP	MUP	MUP	MUP	MUP	
Laboratories	—	P	—	—	—	
Maintenance and Repair Services	P	P	—	P	—	
Marine Services						
Boat Storage	—	—	CUP	—	—	
Boat Yards	—	—	CUP	—	—	
Entertainment and Excursion Services	—	—	P	—	P	Title 17
Marine Service Stations	—	—	CUP	—	CUP	
Water Transportation Services	—	—	MUP	—	MUP	

Massage Establishments	MUP	MUP	—	MUP	MUP	Chapter 5.50 Section 20.48.120
Massage Services, Accessory	MUP	MUP	—	MUP	MUP	Section 20.48.120
Nail Salons	P	P	—	P	P	
Personal Services, General	P	P	—	P	P	
Personal Services, Restricted	MUP	MUP	—	MUP	MUP	
Studio	P	P	—	P	P	
Postal Services	P	P	—	P	P	
Printing and Duplicating Services	P	P	—	P	—	
Recycling Facilities						
Collection Facility—Small	MUP	MUP	—	MUP	—	Section 20.48.160
Smoking Lounges	—	—	—	—	—	
Visitor Accommodations						
Bed and Breakfast Inns	MUP	MUP	MUP	—	MUP	Section 20.48.060
Hotels and Motels	CUP	CUP	CUP	—	CUP	
RV Parks	—	—	—	—	CUP	
Time Share Facilities	—	CUP	—	—	CUP	Section 20.48.220
Transportation, Communications, and Infrastructure Uses						
Communication Facilities	MUP	P	MUP	—	P	
Marinas	Title 17					
Marina Support Facilities	—	—	MUP	—	MUP	
Parking Facilities	MUP	MUP	MUP	MUP	MUP	
Parking Structure, adjacent to	CUP	CUP	—	CUP	CUP	

residential zoning district						
Utilities, Minor	P	P	P	P	P	
Utilities, Major	CUP	CUP	CUP	CUP	CUP	
Wireless Telecommunication Facilities	MUP/CUP/LTP	MUP/CUP/LTP	MUP/CUP/LTP	MUP/CUP/LTP	MUP/CUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities	Chapter 15.70					
Vehicle Rental, Sale, and Service Uses						
Vehicle/Equipment Rentals						
General	—	CUP	—	—	CUP	
Office Only	P	P	P	P	P	
Limited	P	P	P	—	P	
Vehicles for Hire	—	CUP	—	—	CUP	
Vehicle/Equipment Repair						
General	—	CUP	—	—	—	
Limited	MUP	MUP	MUP	—	—	
Vehicle Sales, Office Only	P	P	P	P	P	
Vehicle/Equipment Services						
Automobile Washing/Detailing, full service	—	MUP	—	MUP	MUP	
Automobile Washing/Detailing, self-service or accessory	P	P	—	P	MUP	
Service Stations	CUP	CUP	—	CUP	CUP	Section 20.48.210
Other Uses						
Accessory Structures and Uses	P	P	P	P	P	

Drive-Through Facilities	MUP	MUP	MUP	MUP	MUP	Section 20.48.080
Special Events	Chapter 11.03					
Outdoor Storage and Display	P	P	P	P	P	Section 20.48.140
Temporary Uses	LTP	LTP	LTP	LTP	LTP	Section 20.52.040

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section [20.12.020](#) (Rules of Interpretation).

(1) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public past 11:00 p.m. any day of the week.

(2) Permitted or Minor Use Permit Required.

a. A minor use permit shall be required for any use located within five hundred (500) feet, property line to property line, of any residential zoning district.

b. A minor use permit shall be required for any use that maintains late hours.

A. 20.22.020 Mixed-Use Zoning Districts Land Uses and Permit Requirements.

A. Allowed Land Uses. Tables 2-8, 2-9, and 2-10 indicate the uses allowed within each zoning district and the permit required to establish each use, in compliance with Part 5 of this title (Planning Permit Procedures).

B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.

C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-8 ALLOWED USES AND PERMIT REQUIREMENTS	Mixed-Use Zoning Districts				
	Permit Requirements				
	P	Permitted by Right			
	CUP	Conditional Use Permit (Section 20.52.020)			
	MUP	Minor Use Permit (Section 20.52.020)			
	LTP	Limited Term Permit (Section 20.52.040)			
	—	Not Allowed *			
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	MU-V	MU-MM (6)	MU-DW	MU-CV/15th St. (7)	Specific Use Regulations
Industry, Manufacturing and Processing, Warehousing Uses					
Handicraft Industry	P	P	P	P	
Industry, Marine-Related	—	CUP	—	MUP	
Research and Development	P	P	P	P	
Recreation, Education, and Public Assembly Uses					
Assembly/Meeting Facilities	CUP	CUP	CUP	CUP	
Commercial Recreation and Entertainment	CUP	CUP	CUP	CUP	
Cultural Institutions	P	P	P	P	
Schools, Public and Private	CUP	CUP	CUP	CUP	
Residential Uses					

Single-Unit Dwellings					
Located on 1st floor	—	—	—	P (3)	Section 20.48.130
Located above 1st floor	P (1)	—	—	P (3)	Section 20.48.130
Multi-Unit Dwellings					
Located on 1st floor	—	P (1)(2)	P (1)	P (3)	Section 20.48.130
Located above 1st floor	P (1)	P (1)(2)	P (1)	P (3)	Section 20.48.130
Two-Unit Dwellings					
Located on 1st floor	—	—	—	P (3)	Section 20.48.130
Located above 1st floor	P (1)	—	—	P (3)	Section 20.48.130
Home Occupations	P	P (1)	P	P	Section 20.48.130
Live-Work Units	P	P (1)(2)	P	P (3)	
Care Uses					
Adult Day Care					
Small (6 or fewer)	P	P	P	P	
Child Day Care					
Small (8 or fewer)	P	P	P	P	Section 20.48.070
Day Care, General	—	MUP	—	MUP	Section 20.48.070
Retail Trade Uses					
Alcohol Sales (off-sale)	MUP	MUP	—	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	P	P	P	
Marine Rentals and Sales					
Boat Rentals and Sales	CUP	P	—	CUP	
Marine Retail Sales	P	P	P	P	

Retail Sales	P	P	P	P	
Service Uses—Business, Financial, Medical, and Professional					
ATMs	P	P	P	P	
Emergency Health Care/Urgent Care	MUP	MUP	MUP	MUP	
Financial Institutions and Related Services	P	P	P	P	
Offices—Business	P	P	P	P	
Offices—Medical and Dental	P	P	P	P	
Offices—Professional	P	P	P	P	
Service Uses—General					
Animal Sales and Services					
Animal Grooming	P	P	P	P	Section 20.48.050
Animal Retail Sales	P	P	—	P	Section 20.48.050
Veterinary Services	—	CUP	CUP	—	Section 20.48.050
Artists' Studios	P	P	P	P	
Eating and Drinking Establishments					
Accessory food service (open to public)	P	P	P	P	Section 20.48.090
Fast Food (no late hours) (4)(5)	P/MUP	P/MUP	—	P/MUP	Section 20.48.090
Fast Food (with late hours) (4)	MUP	MUP	—	MUP	Section 20.48.090
Food Service (no late hours) (4)(5)	P/MUP	P/MUP	—	P/MUP	Section 20.48.090
Food Service (with late hours) (4)	CUP	CUP	—	CUP	Section 20.48.090
Take-Out Service, Limited (5)	P/MUP	P/MUP	—	P/MUP	Section 20.48.090
Health/Fitness Facilities					
Small—2,000 sq. ft. or less	P	P	MUP	P	

Large—Over 2,000 sq. ft	CUP	CUP	—	CUP	
Laboratories	—	—	P	—	
Maintenance and Repair Services	P	P	—	P	
Marine Services					
Entertainment and Excursion Services	P	P	—	P	Title 17
Marine Service Stations	CUP	—	—	—	
Personal Services					
Massage Establishments	MUP	MUP	MUP	MUP	Chapter 5.50 Section 20.48.120
Massage Services, Accessory	MUP	MUP	MUP	MUP	Section 20.48.120
Nail Salons	P	P	P	P	
Personal Services, General	P	P	P	P	
Personal Services, Restricted	MUP	MUP	MUP	MUP	
Studio	MUP	MUP	MUP	MUP	
Postal Services	P	P	P	P	
Printing and Duplicating Services	P	P	P	P	
Smoking Lounges	—	—	—	—	
Visitor Accommodations					
Hotels, Motels, and Time Shares	CUP	CUP	—	CUP	
Bed and Breakfast Inns	—	CUP	—	—	
Transportation, Communications, and Infrastructure Uses					
Parking Facility	MUP	MUP	MUP (2)	MUP (2)	
Marinas	Title 17				
Marina Support Facilities	MUP	MUP	—	MUP	
Utilities, Minor	P	P	P	P	
Utilities, Major	CUP	CUP	CUP	CUP	

Wireless Telecommunication Facilities	MUP/CUP/LTP	MUP/CUP/LTP	MUP/CUP/LTP	MUP/CUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities	Chapter 15.70				
Vehicle Rental, Sale, and Service Uses					
Vehicle/Equipment Rentals					
Office Only	P	P	P	P	
Limited (no outdoor storage)	—	MUP	—	—	
Vehicle/Equipment Repair					
Limited	—	MUP	—	—	
Vehicle Sales	—	CUP	—	—	
Vehicle Sales, Office Only	P	P	P	—	
Vehicle/Equipment Services					
Automobile Washing	—	CUP	—	—	
Service Stations	—	CUP	—	—	Section 20.48.210
Other Uses					
Accessory Structures and Uses	MUP	MUP	MUP	MUP	
Outdoor Storage and Display	MUP	MUP	MUP	MUP	Section 20.48.140
Personal Property Sales	P	P	P	P	Section 20.48.150
Special Events	Chapter 11.03				
Temporary Uses	LTP	LTP	LTP	LTP	Section 20.52.040

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section [20.12.020](#) (Rules of Interpretation).

- (1) Allowed only as part of a mixed-use development. Refer to Section [20.48.130](#) (Mixed-Use Projects) for additional development standards.
- (2) Not allowed to front onto Coast Highway. Coast Highway frontage shall be limited to nonresidential uses. See Table 2-10 (Development Standards for Vertical and Horizontal Mixed-Use Zoning Districts).
- (3) Not allowed on lots at street intersections unless part of a mixed-use or live-work structure.

- (4) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public after 11:00 p.m. any day of the week.
- (5) Permitted or Minor Use Permit Required.
- a. A minor use permit shall be required for any use located within five hundred (500) feet, property line to property line, of any residential zoning district.
- b. A minor use permit shall be required for any use that maintains late hours.
- (6) Properties fronting on Coast Highway shall be developed with nonresidential uses as allowed in Table 2-9. Properties to the rear of the commercial frontage may be developed for freestanding nonresidential uses, multi-unit residential dwelling units, or mixed-use structures that integrate multi-unit residential above the ground floor with nonresidential uses on the ground floor. See Table 2-10 (Development Standards for Vertical and Horizontal Mixed-Use Zoning Districts).
- (7) Mixed-use or commercial structures are required on lots at street intersections and are allowed, but not required, on other lots.

TABLE 2-9 ALLOWED USES AND PERMIT REQUIREMENTS	Mixed-Use Zoning Districts Permit Requirements		
	P CUP MUP LTP —	Permitted by Right Conditional Use Permit (Section 20.52.020) Minor Use Permit (Section 20.52.020) Limited Term Permit (Section 20.52.040) Not allowed *	
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	MU-W1 (5)(6)	MU-W2	Specific Use Regulations
Industry, Manufacturing and Processing, Warehousing Uses			
Handicraft Industry	P	P	
Industry, Marine-Related	P	P	
Research and Development	P	P	

Recreation, Education, and Public Assembly Uses			
Assembly/Meeting Facilities			
Small—5,000 sq. ft. or less (religious assembly may be larger than 5,000 sq. ft.)	CUP	CUP	
Commercial Recreation and Entertainment	CUP	CUP	
Cultural Institutions	P	P	
Parks and Recreational Facilities	CUP	CUP	
Schools, Public and Private	CUP	CUP	
Residential Uses			
Single-Unit Dwellings			
Located on 1st floor	—	—	
Located above 1st floor	P (1)	P (2)	Section 20.48.130
Multi-Unit Dwellings			
Located on 1st floor	—	—	
Located above 1st floor	P (1)	P (2)	Section 20.48.130
Two-Unit Dwellings			
Located on 1st floor	—	—	
Located above 1st floor	P (1)	P (2)	
Home Occupations	P	P (2)	Section 20.48.110
Care Uses			
Adult Day Care			
Small (6 or fewer)	P	P	
Child Day Care			
Small (8 or fewer)	P	P	Section 20.48.070
Day Care, General	—	MUP	Section 20.48.070
Retail Trade Uses			
Alcohol Sales (off-sale)	MUP	MUP	Section 20.48.030

Alcohol Sales (off-sale), Accessory Only	P	P	
Marine Rentals and Sales			
Boat Rentals and Sales	P	P	
Marine Retail Sales	P	P	
Retail Sales	P	P	
Visitor-Serving Retail	P	P	
Service Uses—Business, Financial, Medical, and Professional			
ATMs	P	P	
Emergency Health Facilities/Urgent Care	—	P	
Financial Institutions and Related Services (above 1st floor only)	P	P	
Offices—Business	P	P	
Offices—Medical and Dental (above 1st floor only)	—	P	
Offices—Profession	P	P	
Service Uses—General			
Animal Retail Sales	MUP	MUP	Section 20.48.050
Artists' Studios	P	P	
Eating and Drinking Establishments			
Accessory Food Service (open to public)	P	P	Section 20.48.090
Fast Food (no late hours) (3)(4)	P/MUP	P/MUP	Section 20.48.090
Fast Food (with late hours) (3)	MUP	MUP	Section 20.48.090
Food Service (no alcohol, no late hours) (3)(4)	P/MUP	P/MUP	Section 20.48.090
Food Service (no late hours) (3)	MUP	MUP	Section 20.48.090
Food Service (with late hours) (3)	CUP	CUP	Section 20.48.090
Take-Out Service—Limited (3) (4)	P/MUP	P/MUP	Section 20.48.090

Health/Fitness Facilities			
Small—2,000 sq. ft. or less	P	P	
Maintenance and Repair Services	P	P	
Marine Services			
Boat Storage	CUP	CUP	
Boat Yards	CUP	CUP	
Entertainment and Excursion Services	P	P	
Marine Service Stations	CUP	CUP	
Water Transportation Services	P	P	
Personal Services			
Massage Establishments	MUP	MUP	Chapter 5.50 Section 20.48.120
Massage Services, Accessory	MUP	MUP	Section 20.48.120
Nail Salons	P	P	
Personal Services, General	P	P	
Personal Services, Restricted	MUP	MUP	
Smoking Lounges	—	—	
Visitor Accommodations			
Hotels, Motels, Bed and Breakfast Inns, and Time Shares	CUP	CUP	
Transportation, Communications, and Infrastructure			
Parking Facilities	MUP	MUP	
Communication Facilities	P	P	
Heliports and Helistops (7)	CUP	CUP	
Marinas	Title 17		
Marina Support Facilities	MUP	MUP	
Utilities, Minor	P	P	
Utilities, Major	CUP	CUP	
Wireless Telecommunication Facilities	MUP/CUP/LTP	MUP/CUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities	Chapter 15.70		

Other Uses			
Accessory Structures and Uses	MUP	MUP	
Outdoor Storage and Display	MUP	MUP	Section 20.48.140
Personal Property Sales	P	P	Section 20.48.150
Special Events	Chapter 11.03		
Temporary Uses	LTP	LTP	Section 20.52.040

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section [20.12.020](#) (Rules of Interpretation).

- (1) May only be located on lots with a minimum of two hundred (200) lineal feet of frontage on Coast Highway. Refer to Section [20.48.130](#) (Mixed-Use Projects) for additional development standards.
- (2) May only be located above a commercial use and not a parking use. Refer to Section [20.48.130](#) (Mixed-Use Projects) for additional development standards.
- (3) Late Hours. Facilities with late hours shall mean facilities that offer service and are open to the public past 11:00 p.m. any day of the week.
- (4) Permitted or Minor Use Permit Required.
 - a. A minor use permit shall be required for any use located within five hundred (500) feet, property line to property line, of any residential zoning district.
 - b. A minor use permit shall be required for any use that maintains late hours.
- (5) Approval of a minor site development review, in compliance with Section [20.52.080](#), shall be required prior to any development to ensure that the uses are fully integrated and that potential impacts from their differing activities are fully mitigated.
- (6) A minimum of fifty (50) percent of the square footage of a mixed-use development shall be used for nonresidential uses.
- (7) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.

A. 20.24.020 Industrial Zoning District Land Uses and Permit Requirements.

A. Allowed Land Uses. Table 2-12 indicates the uses allowed within each zoning district and the permit required to establish each use, in compliance with Part 5 of this title (Planning Permit Procedures).

B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.

C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-12 ALLOWED USES AND PERMIT REQUIREMENTS	Industrial Zoning District Permit Requirements	
	P CUP MUP LTP —	Permitted by Right Conditional Use Permit (Section 20.52.020) Minor Use Permit (Section 20.52.020) Limited Term Permit (Section 20.52.040) Not allowed *
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	IG	Specific Use Regulations
Industry, Manufacturing and Processing, Warehousing Uses		
Food Processing	P	
Handicraft Industry	P	
Industry		
Small—10,000 sq. ft. or less	P	
Large—Over 10,000 sq. ft.	MUP	
Personal Storage (Mini Storage)	MUP	
Research and Development, General	P	
Research and Development, Restricted	MUP	
Warehousing		
Small—10,000 sq. ft. or less	P	

Large—Over 10,000 sq. ft	MUP	
Wholesaling	P	
Recreation, Education, and Public Assembly Uses		
Assembly/Meeting Facilities	CUP	
Retail Trade Uses		
Alcohol Sales (off-sale)	MUP	Section 20.48.030
Alcohol Sales (off-sale), Accessory Only	P	
Building Materials and Services	P	
Contractor's Storage Yards	MUP	
Marine Rentals and Sales		
Boat Rentals and Sales	MUP	
Marine Retail Sales	P	
Retail Sales	P	
Service Uses—Business, Financial, Medical, and Professional		
ATMs	P	
Offices—Business and Professional	P	
Service Uses—General		
Ambulance Services	P	
Animal Sales and Services		
Animal Boarding/Kennels	MUP	Section 20.48.050
Animal Grooming	P	Section 20.48.050
Animal Hospitals/Clinics	MUP	Section 20.48.050
Animal Retail Sales	P	Section 20.48.050
Catering Services	P	
Eating and Drinking Establishments		
Take-Out Service—Limited	P	Section 20.48.090
Funeral Homes and Mortuaries	CUP	
Health/Fitness Facilities		
Small—2,000 sq. ft. or less	P	
Large—Over 2,000 sq. ft.	MUP	
Laboratories	P	

Maintenance and Repair Services	P	
Marine Services		
Boat Storage	MUP	
Boat Yards	MUP	
Personal Services		
Studios	P	
Postal Services	P	
Printing and Duplicating Services	P	
Recycling Facilities		
Collection Facility—Large	CUP	Section 20.48.160
Collection Facility—Small	MUP	Section 20.48.160
Transportation, Communications, and Infrastructure Uses		
Communication Facilities	P	
Heliports and Helistops (1)	CUP	
Parking Facilities	P	
Utilities, Minor	P	
Utilities, Major	CUP	
Wireless Telecommunication Facilities	MUP/CUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities		Chapter 15.70
Vehicle Rental, Sale, and Service Uses		
Vehicle/Equipment Rentals		
Office Only	P	
Limited	P	
Vehicles for Hire	CUP	
Vehicle/Equipment Rentals and Sales	MUP	
Vehicle/Equipment Repair		
General	CUP	
Limited	MUP	
Vehicle/Equipment Services		
Automobile Washing/Detailing	MUP	
Service Stations	CUP	Section 20.48.210

Vehicle Storage	MUP	
Other Uses		
Accessory Structures and Uses	P	
Caretaker Residence	P	
Drive-Through Facilities	CUP	Section 20.48.080
Outdoor Storage and Display	MUP	Section 20.48.140
Special Events	Chapter 11.03	
Temporary Uses	LTP	Section 20.52.040

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section [20.12.020](#) (Rules of Interpretation).

- (1) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.

A. 20.26.020 Special Purpose Zoning Districts Land Uses and Permit Requirements.

A. Allowed Land Uses. Table 2-14 indicates the uses allowed within each zoning district and the permit required to establish each use, in compliance with Part 5 of this title (Planning Permit Procedures).

B. Prohibited Land Uses. Any table cell with “—” means that the listed land use is prohibited in that specific zoning district.

C. Applicable Regulations. The last column in the tables (“Specific Use Regulations”) may include a reference to additional regulations that apply to the use.

TABLE 2-14 ALLOWED USES AND PERMIT REQUIREMENTS	Special Purpose Zoning Districts				
	Permit Requirements				
	P Permitted by Right				
	CUP Conditional Use Permit (Section 20.52.020)				
	MUP Minor Use Permit (Section 20.52.020)				
	LTP Limited Term Permit (Section 20.52.040)				
	— Not allowed *				
Land Use See Part 7 of this title for land use definitions. See Chapter 20.12 for unlisted uses.	OS	PF	PI	PR	Specific Use Regulations
Recreation, Education, and Public Assembly Uses					
Assembly/Meeting Facilities	—	MUP	MUP	MUP	
Commercial Recreation and Entertainment	—	—	MUP	CUP	
Cultural Institutions	—	MUP	MUP	MUP	
Parks and Recreational Facilities					
Active	—	MUP	MUP	MUP	
Passive	MUP	MUP	MUP	MUP	
Marine and Wildlife Preserves	MUP	—	—	—	
Schools, Public and Private	—	MUP	MUP	—	
Care Uses					

Congregate Care Home	—	—	MUP	—	
Convalescent Facilities	—	—	MUP	—	
Day Care, General	—	MUP	MUP	—	Section 20.48.070
Emergency Health Facility/Urgent Care	—	—	MUP	—	
Hospital	—	—	MUP	—	
Residential Care, Accessory Use Only	—	MUP	MUP	—	
Retail Trade Uses					
Alcohol Sales (on-sale), Accessory Only	—	—	MUP	CUP	
Service Uses—General					
Eating and Drinking Establishments					
Accessory (open to public)	—	—	MUP	MUP	Section 20.48.090
Emergency Shelters	—	—	P	—	Section 20.48.100
Governmental Facilities	—	MUP	—	MUP	
Marine Services—Boat Storage and Boat Yard, Accessory Only	—	MUP	MUP	MUP	
Transportation, Communications, and Infrastructure					
Parking Facilities, Accessory Only	—	MUP	MUP	MUP	
Heliports and Helistops (1)	—	MUP	—	—	
Marinas	MC Title 17				
Marina Support Facilities	—	MUP	MUP	MUP	
Utilities, Minor	P	P	P	P	
Utilities, Major	CUP	CUP	CUP	CUP	
Wireless Telecommunication Facilities	— (2)	MUP/CUP/LTP	MUP/CUP/LTP	MUP/CUP/LTP	Chapter 20.49
Wireless Telecommunication Facilities	Chapter 15.70				

Other Uses					
Accessory Structures and Uses	MUP	MUP	MUP	MUP	
Special Events	Chapter 11.03				
Temporary Uses	LTP	LTP	LTP	LTP	Section 20.52.040

* Uses Not Listed. Land uses that are not listed in the table above, or are not shown in a particular zoning district, are not allowed, except as otherwise provided by Section [20.12.020](#) (Rules of Interpretation).

(1) Applicants for City approval of a heliport or helistop shall provide evidence that the proposed heliport or helistop complies fully with State of California permit procedures and with any and all conditions of approval imposed by the Federal Aviation Administration (FAA), the Airport Land Use Commission for Orange County (ALUC), and by the Caltrans Division of Aeronautics.

(2) Wireless Telecommunication Facilities are prohibited in the OS Zoning District unless collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility (Section 20.49.050.B)

Attachment No. PC 2

Summary of Proposed Changes to
Telecom Ordinance

ATTACHMENT No. PC 2
Summary of Proposed Changes to Telecom Ordinance

Existing Section Proposed Section	Proposed Changes/Comments
15.70.010 Purpose and Intent <i>Replaced by</i> 20.49.010 Purpose and Intent	No policy change; minor wording changes to state the provisions of this Chapter apply to all providers and operators of wireless services whether authorized by state or federal regulations.
15.70.020 General Provisions <i>Replaced by</i> 20.49.020 General Provisions	<ul style="list-style-type: none"> Revised to require an application for a conditional use permit (CUP), minor use permit (MUP), or limited term permit for any telecom facility, depending on method of installation, or duration of telecom facility. Revised to include requirement for encroachment permits for facilities located in the public right-of-way. Revised to include requirement of a license agreement for any facility located on City-owned property. Updated to identify types of facilities that are exempt from regulations of this Chapter. Includes exemption of systems installed or operated by the City (as currently provided for in existing Section 15.70.110). Provision added regarding legal nonconforming facilities.
15.70.030 Definitions <i>Replaced by</i> 20.49.030 Definitions	<ul style="list-style-type: none"> Definitions added to reflect current industry standards (words such as “base station,” “wireless tower,” or “distributed antenna system (DAS)”). Definitions updated to ensure consistency with Chapter 13.20 (Public Rights-of-Way) of the NBMC. Definitions added to identify types of telecom facilities as an antenna class based on aesthetic impacts and method of installation.
15.70.040 Available Technology <i>Replaced by</i> 20.49.040 Available Technology	No policy change; minor wording changes only.
15.70.050 Height and Location <i>Replaced by</i> 20.49.050 Location Preferences	<ul style="list-style-type: none"> Height regulations moved to “Development and Design Standards” in proposed Section 20.49.060 (page 2). Location categories (such as a “wall, roof or existing co-location structure or site”) identified as a new distinct antenna class. Examples of typical telecom facilities provided for each antenna class. Minor changes to priority order of location preference of a telecom facility, based on antenna class. Prohibited locations updated to prohibit telecom facilities on single-family development, two-family development, or multi-unit residential developments consisting of 4 dwelling units or less. Exception to allow telecom facilities in an Open Space zoning district when collocated on an existing nonconforming telecom facility or site. Regulations for installations in the public right-of-way added.

Existing Section	Proposed Changes/Comments
Proposed Section	
15.70.060 Design Standards <i>Replaced by</i> 20.49.060 General Development and Design Standards	<ul style="list-style-type: none"> Height regulations moved to this section (from existing Section 15.70.050). Height subsection revised to allow telecom facility antennas, equipment, or screen structures to be installed: <ul style="list-style-type: none"> up to 5 feet above base height limit for the zoning district in which the telecom facility is located with approval of MUP, or up to the maximum height limit with approval of a CUP. For example, for a commercial retail zoning district within the Shoreline Height Limit Zone, the base height limit is 26 feet with a flat roof, or 31 feet with a sloped roof, and the maximum height limit is 35 feet with a flat roof, or 40 feet with a sloped roof. The existing telecom ordinance allows antennas to be installed up to the maximum height limit, or in this example up to 35 feet if disguised or screened within a flat roof structure or 40 feet if disguised or screened within a sloped roof structure. Provision added to require telecom facilities to comply with Airport Environs Land Use Plan and Airport Land Use Commission review requirements. Setback requirements updated to require an additional setback or “fall zone” for ground-mounted “wireless towers” in the event of involuntary damage, which would be the greater distance of either the required setback established by the Zoning Code or 110% of the height of the “wireless tower.” Detailed design and screening techniques added based on antenna class. Requirement added for evaluation of potential impacts to public views. Maintenance requirements added.
15.70.070 Permit Review Procedures <i>Replaced by</i> 20.49.070 Permit Review Procedures	<ul style="list-style-type: none"> Table added to reflect type of permit required based on location of facility, and antenna class (i.e., MUP, CUP, or LTP). Public notice and public hearing requirements added, consistent with Chapter 20.62 of the Zoning Code. All applications for a telecom facility require a public hearing before the Zoning Administrator or Planning Commission, with appeal provisions to the City Council. Findings for telecom facilities added, including additional findings for applications which request to exceed height limits.
15.70.080 Radiation Report	<ul style="list-style-type: none"> Radiation report requirements moved to proposed Section 20.49.110 (page 3).
<i>Proposed New Section</i> 20.49.080 Permit Implementation, Time Limits, Duration, and Appeals	<ul style="list-style-type: none"> Process for implementation of permits, time limits, and extensions for telecom facilities added, consistent with Chapter 20.54 of Zoning Code. Appeal procedures consistent with Chapter 20.64 of the Zoning Code added, allowing any interested party to appeal a decision on an application.
15.70.090 Right to Review or Revoke Permit	<ul style="list-style-type: none"> Regulations regarding the right to remove or revoke a telecom permit granted by the City revised and moved to proposed Section 20.49.120 (page 3). Regulations regarding changed circumstances updated and moved to proposed Section 20.49.100 (page 3).

Existing Section	Proposed Changes/Comments
Proposed Section	
<i>Proposed New Section</i> 20.49.090 Agreement for Use of City-owned or City-held Trust Property	<ul style="list-style-type: none"> Proposed Section 20.49.090 added, requiring a license agreement for any telecom facility located on City property. Procedure for processing license agreements described in Council Policy L-23.
15.70.100 Removal of Telecom Facilities	<ul style="list-style-type: none"> Section 15.70.100 moved to proposed Section 20.49.130 (below).
<i>Proposed New Section</i> 20.49.100 Modification of Existing Telecom Facilities	<ul style="list-style-type: none"> Proposed Section 20.49.100 added to provide regulations consistent with federal law for modifications to existing telecom facilities. Modifications to existing facilities that do not “substantially change the physical dimensions” of the telecom facility are subject to a ministerial review and approval and do not require processing of a discretionary permit, as required by federal regulations. Changes to existing facilities that meet the criteria of “substantially change the physical dimensions” by increasing or decreasing by 5% or more the height, width, or depth in any direction of any portion of the existing “wireless tower” or “base station” will require the processing of a new discretionary permit.
15.70.110 Exemption for City Systems	<ul style="list-style-type: none"> Section 15.70.110 (Exemption for City Systems) relocated and updated in proposed Section 20.49.020 (General Provisions).
<i>Proposed New Section</i> 20.49.110 Operational and Radio Frequency Compliance and Radiation Report	<ul style="list-style-type: none"> Radiation report requirements unchanged from existing Section 15.70.080. Provision added to require compliance with the most current regulatory and operational standards adopted by the FCC. Provision added to require an updated RF compliance report be prepared and submitted upon any proposed increase of at least 10% in effective radiated power or change in frequency use of the telecom facility.
<i>Proposed New Section</i> 20.49.120 Right to Review or Revoke Permit	<ul style="list-style-type: none"> Moved from existing Section 15.70.090 to proposed new section. Provisions regarding “changed circumstance” (subsection A.) deleted. No policy change or revisions to provision regarding right to revoke or modify permit (subsection B.).
<i>Proposed New Section</i> 20.49.130 Removal of Telecom Facilities	<ul style="list-style-type: none"> Moved from existing Section 15.70.100 to this proposed new section. No policy change; minor revisions to text providing Community Development Director the ability to exercise discretion as to what constitutes a “reasonable period of time” when an operator proposes to transfer rights to another operator.

The “Allowed Uses and Permit Requirements” tables in the following sections of the Zoning Code would be updated to reflect the zoning districts in which telecom facilities are allowed and the permit required to establish a telecom facility. Under the existing and proposed telecom ordinance, telecom facilities are allowed in all commercial, mixed-use, and industrial zoning districts, as well as on properties zoned for public facilities, private institutions, and active public or private recreational uses.

Table	Existing Code Section
Table 2-1 Residential Zoning Districts	Section 20.18.020 – Residential Zoning Districts Land Uses and Permit Requirements
Table 2-4 Commercial Office Zoning Districts Table 2-5 Commercial Retail Zoning Districts	Section 20.20.020 – Commercial Zoning Districts Land Uses and Permit Requirements
Tables 2-8 and 2-9 Mixed-Use Zoning Districts	Section 20.22.020 – Mixed-Use Zoning Districts Land Uses and Permit Requirements
Table 2-12 Industrial Zoning District	Section 20.24.020 – Industrial Zoning Districts Land Uses and Permit Requirements
Table 2-14 Special Purpose Zoning Districts	Section 20.26.020 – Special Purpose Zoning Districts Land Uses and Permit Requirements

Attachment No. PC 3

Existing Chapter 15.70

Chapter 15.70

WIRELESS TELECOMMUNICATION FACILITIES

Sections:

<u>15.70.010</u>	Purpose and Intent.
<u>15.70.020</u>	General Provisions.
<u>15.70.030</u>	Definitions.
<u>15.70.040</u>	Available Technology.
<u>15.70.050</u>	Height and Location.
<u>15.70.060</u>	Design Standards.
<u>15.70.070</u>	Permit Review Procedures.
<u>15.70.080</u>	Radiation Report.
<u>15.70.090</u>	Right to Review or Revoke Permit.
<u>15.70.100</u>	Removal of Telecom Facilities.
<u>15.70.110</u>	Violation a Misdemeanor.

15.70.010 Purpose and Intent.

A. Purpose. The purpose of this chapter is to provide for wireless telecommunication ("telecom") facilities on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:

1. Encourage the location of antennas in non-residential areas.
2. Strongly encourage co-location at new and existing antenna sites.
3. Encourage telecom facilities to be located in areas where adverse impacts on the community and on public views are minimized.

B. The provisions of this chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services. (Ord. 2002-24 § 1 (part), 2002)

15.70.020 General Provisions.

A. Applicability. These regulations are applicable to telecom facilities providing voice and/or data transmission such as, but not limited to, cell phone and radio relay stations.

B. Exempt Facilities. Amateur radio and receiving satellite dish antennas regulated by Chapter 20.6I are exempt from the provisions of this chapter.

C. Permit Required. A permit shall be required for all telecom facilities regulated by this chapter in accordance with Section [15.70.070](#).

D. Other Regulations. All telecom facilities within the City shall comply with the provisions of this chapter and the following requirements:

1. Conditions in any permit or license issued by a local, state or federal agency which has jurisdiction over the telecom facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).
3. Easements, covenants, conditions or restrictions on the underlying real property.
4. The Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code and National Electrical Code, as amended by state or local law or regulation.
5. The provisions of Title [13](#) to the extent the telecom facilities are proposed to be located on or within the public right of way.

E. Regulations not in Conflict or Preempted. All telecom facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this chapter:

1. Design guidelines or standards in any applicable specific plan within the Newport Beach Zoning Code (Title [20](#)).
2. Requirements established by any other provision of the Municipal Code or by any other ordinance or regulation of the City, other than those listed in paragraph D of this section.

F. Setbacks. Setbacks shall be measured from the part of the telecom facility closest to the applicable lot line or structure.

G. Maintenance. The telecom operator shall maintain the telecom facility in a manner consistent with the original approval of the facility.

H. Non-Conformities. A proposed telecom facility shall not create any new or increased non-conformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, parking, landscaping, or loading zones. (Ord. 2002-24 § 1 (part), 2002)

15.70.030 Definitions.

For the purposes of this chapter, certain terms shall have meanings as follows:

- A. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, antennas, arrays, or other similar devices.
- B. Antenna Array shall mean antennas having active elements extending in more than one direction, and directional antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and antenna support, all of which elements are deemed to be part of the antenna.
- C. City means the City of Newport Beach.
- D. City Council or Council means the City Council of the City of Newport Beach.
- E. City Property means all real property and improvements owned, operated or controlled by City, other than public right of way, within the City's jurisdiction. City Property includes, but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, streetlights and traffic lights.
- F. Co-location means an arrangement whereby multiple telecom facilities owned or operated by different telecom operators share the same structure or site.
- G. Department Director or Reviewing Department Director means either the Planning Director or the Public Works Director, as applicable.
- H. FCC means the Federal Communications Commission.
- I. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.
- J. Lattice Tower means an open framework structure used to support antennas, typically with three or four support legs.
- K. Monopole means a single free-standing pole used to act as or support a telecom antenna or antenna arrays.
- L. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a telecom facility or facilities within the City.
- M. Planning Director means the Planning Director of the City or his or her designee.
- N. Public Right of Way or ("PROW") means any public way, or rights-of-way, now laid out or dedicated, and the space on, above or below it, and all extensions thereof and additions thereto, owned, operated and/or controlled by the City or subject to an easement owned by City. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

- O. Public Works Director means the Public Works Director of the City or his or her designee.
- P. Residential Lot means a lot containing, or zoned for, one or more dwelling units in the R-1, R-1.5, R-2, or in the residential portions of the PC or SP Districts.
- Q. Reviewing Authority means the person or body authorized under the provisions of this chapter to review and act upon a telecom application, i.e. either a specified staff department director or the City Council.
- R. Stealth or Stealth Facility means a telecom facility in which the antenna, and sometimes the support equipment, are hidden from view in a false tree, monument, cupola, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.
- S. Support Equipment means the physical, electrical and/or electronic equipment included within a telecom facility used to house, power, and/or process signals from or to the facility's antenna or antennas.
- T. Telecommunication(s) Facility, Telecom Facility, Wireless Telecommunications Facility, or simply Facility means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.
- U. Title [20](#) or Zoning Code means Title [20](#) of the Newport Beach Municipal Code.
- V. Utility Tower shall mean an open framework structure or steel pole used to support electric transmission facilities.
- W. Zoning District or District means an area of the City designated on the official Districting Maps and subject to a uniform set of permitted land uses and development standards. (Ord. 2002-24 § 1 (part), 2002)

15.70.040 Available Technology.

All telecom facilities approved under this Chapter shall utilize the most efficient and diminutive available technology in order to minimize the number of facilities and reduce their visual impact. (Ord. 2002-24 § 1 (part), 2002)

15.70.050 Height and Location.

- A. Height.

1. Maximum Height. No antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

a. Thirty-five (35) feet for antennas on streetlights, traffic control standards, utility distribution poles, or other similar structures within the public right-of-way. Antennas may be placed on existing utility poles that exceed thirty-five (35) feet, where the purpose of the existing utility pole is to carry electricity, provided that the top of the antenna does not exceed the top of the pole.

b. For all other telecom facilities, the maximum height of antennas shall be the upper maximum building height allowed in the zoning district as specified in the Zoning Code (for example, no higher than thirty-five (35) feet in the “26/35 Foot Height Limitation Zone”).

2. Over-Height Antennas. The City Council may approve antennas up to fifteen (15) feet above the preceding maximum building height limitations under the special review provisions of Section [15.70.070](#) of this Chapter.

3. “Stealth” Telecommunication Installations within Structures. Stealth facilities may be installed within structures that are permitted to exceed the above stated height limits, either by right under Title [20](#) or which have received a Use Permit.

B. Location.

1. Location Categories and Location Priorities. Locations for telecom facilities shall be selected according to the following priority order:

- a. Wall, roof or existing co-location structure or site;
- b. Existing pole, light standard, or utility tower;
- c. Commercial sign or architectural feature;
- d. New or existing “stealth” structure other than a false tree;
- e. New false tree;
- f. New “Slim Jim” monopole (i.e. with no antenna elements other than the pole itself);
- g. New standard monopole with attached antenna elements;
- h. New lattice tower.

2. Special Requirements. Proposals for telecom facilities at location categories “e” through “h” in Section 15.070.050B(1) shall require special review by the City Council under the provisions

of Section [15.70.070](#) of this chapter. In such cases, the applicant shall be required to show to the satisfaction of the Council that:

- a. Higher priority locations are either not available or are not feasible;
- b. Establishment of a facility on a new standard monopole or lattice tower is necessary to provide service; and
- c. Lack of such a facility would result in a denial of service.

3. Other Locations Requiring Special Approval. Telecom facilities are prohibited in the following locations unless given special approval by the City Council under the provisions of Section [15.70.070](#):

- a. On common area lots or other non-residential lots within residential districts.
- b. Within any required setback established in the Zoning Code.
- c. On multifamily structures on lots zoned MFR.

4. Prohibited Locations. Telecom facilities are prohibited in the following locations:

- a. On residential lots.
- b. In the Open Space-Passive (OSP) zoning district, unless facilities are co-located on an existing utility tower within a utility easement area.

C. Co-Location Requirements.

1. Co-Location Required. To limit the adverse visual effects of a proliferation of telecom sites in the City, a new telecom facility proposed within one thousand (1000) feet of an existing facility shall be required to co-locate on the same site as the existing facility unless the reviewing authority determines, based on evidence submitted by the applicant, that such co-location is not feasible.

2. Co-Location Limitations. No more than three telecom facilities may co-locate at a single site unless the reviewing authority finds that:

- a. The net visual effect of locating an additional facility at a co-location site will be less than establishing a new location; or
- b. Based on evidence submitted by the applicant, there is no available feasible alternate location for a proposed new facility.

3. Condition Requiring Future Co-Location. In approving a telecom facility, the reviewing authority may impose a condition of approval allowing future co-location of telecom facilities by other carriers at the same site. (Ord. 2002-24 § 1 (part), 2002)

15.70.060 Design Standards.

A. General Criteria. In addition to the other design standards of this Section, the following criteria shall be considered by the reviewing authority in connection with its processing of any telecom permit.

1. Blending. The extent to which the proposed facility blends into the surrounding environment or is architecturally integrated into structure.
2. Screening. The extent to which the proposed facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed facility, particularly in relation to surrounding and supporting structures.

B. Free-Standing Antennas. Antennas and any poles or other structures erected to support antennas shall be visually compatible with surrounding buildings and vegetation. The reviewing authority may require that the antenna be colored to blend into the sky or other background.

C. Roof-Mounted Antennas. Roof-mounted antennas, except whip antennas, shall be blended or screened from public view in a manner consistent with the building's architectural style, color and materials including, if determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations.

D. Wall-Mounted Antennas. Wall-mounted antennas shall be painted to match the color of the wall on which they are mounted. Cables and mounting brackets shall be hidden. Shrouds may be required by the reviewing authority to screen wall-mounted antennas.

E. Support Equipment.

1. Building-Mounted Installations. For building-mounted installations, support equipment for the facility shall be placed within the building. If the reviewing authority determines that such building placement is not feasible, the equipment shall be roof-mounted in an enclosure or shall otherwise be screened from public view in a manner approved by the reviewing authority. Roof-mounted equipment shall comply with the height limits applicable to the building per the Zoning Code. All screening used in connection with a building-mounted facility shall be compatible with the architecture, color, texture and materials of the building to which it is mounted.
2. Ground-Mounted Installations. For ground-mounted installations, support equipment shall be screened in a security enclosure approved by the reviewing authority. Such screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a "closed-

mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the reviewing authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors. Buffer landscaping may also be required if the reviewing authority determines that additional screening is necessary due to the location of the site and that irrigation water is available.

3. Installations in Public Right-of-Way. Telecom Facilities and or support equipment proposed to be located in the public right-of-way shall comply with the provisions of Title [13](#). In addition, ground-mounted equipment in the public right-of-way shall comply with all requirements of the Americans with Disabilities Act (ADA).

F. Night Lighting. Telecom facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose. Such lighting shall be shielded so that direct rays do not shine on nearby properties. The reviewing authority shall consult with the Police Department regarding proposed security lighting for telecom facilities on a case-by-case basis.

G. Signs and Advertising. No advertising signage or identifying logos shall be displayed on any telecom facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the reviewing authority. (Ord. 2002-24 § 1 (part), 2002)

15.70.070 Permit Review Procedures.

A. Reviewing Authority. All applicants for telecom facilities not within the public right-of-way shall apply for a permit from the Planning Department as follows:

1. Private or City-Owned Property. Facilities on private property or on City-owned property shall be reviewed by the Planning Director as a “Telecom Permit”.
2. Referral to City Council. The Planning Director may refer any application to the City Council for special review under the procedures set out in Paragraph F of this Section.

B. Submission Requirements. Applications for telecom facilities shall be accompanied by the following documentation in a form and containing information acceptable to the reviewing authority:

1. Plans. Site Plans and Elevations drawn to scale.
2. Justification. A brief narrative, accompanied by written documentation where appropriate, which explains the purpose of the facility and validates the applicant’s efforts to comply with the design, location, and co-location standards of this chapter.
3. Maps. A map or maps showing the geographic area to be served by the facility. In order to facilitate planning and gauge the need for future telecom facilities, the reviewing department

director may also require the operator to submit a comprehensive plan of the operator's existing and future facilities that are or may be placed within the city limits of Newport Beach.

4. Visual Simulations. Visual simulations showing "before" and "after" views of the proposed facility, unless the reviewing department director determines that such simulations are not necessary for the application in question. Consideration shall be given to views from both public areas and private residences.

5. Emission Standards and Non-Interference Data. Documentation showing the specific frequency range that the facility will use upon and throughout activation, certification that the facility will continuously comply with FCC emissions standards, and that use of the telecom facility will not interfere with other communication, radio, or television transmission or reception.

6. Property Ownership. Evidence of ownership of the real property on which the proposed telecom facility will be located, or if the applicant does not own the real property, the name and mailing address of the real property owner(s), and evidence of authorization from the real property owner to place the facility on the property.

7. Wind Load Calculations. For proposed antenna installations on new monopoles, utility poles, or other structures subject to wind loads, the applicant shall submit wind load calculations prepared or approved by an engineer registered in California. The wind load calculations shall show, to the satisfaction of the reviewing authority, that the resulting installation will be safe and secure under wind load conditions. The calculations shall take into account other existing attachments to the supporting structure and potential future antennas co-located on the structure by other operators.

8. Mailing List. If public notice is required by the reviewing authority, a list of property owners within three hundred (300) feet of the proposed telecom facility taken from the latest assessor rolls.

9. Supporting Materials. Additional supporting materials as deemed necessary by the reviewing department director to complete review of the proposal. Supporting materials may include, but are not limited to, color and material sample boards, proposed informational signage, and landscaping plans.

10. Fee. Applications shall be accompanied by a fee established by resolution of the City Council to defray all estimated costs and expenses incidental to review and processing of the application, including any expense incurred by the Police Department or for any outside technical or legal services to review the application. This fee shall be in addition to other fees required by the Municipal Code.

C. Review Process for Proposals on City Property. Review of telecom applications for facilities on City property shall be as follows:

1. Filing. Applications shall be submitted to the Planning Director for facilities on City property shall undergo initial staff review for compliance with the provisions of this Chapter and Title [13](#). Within thirty (30) days of filing, the reviewing department director shall notify the applicant in writing whether the application is complete. If an application is determined to be not complete, the notification shall identify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete.

2. Emergency Communications Review. At the same time as the Applicant submits an application to the Planning Director, the Applicant shall submit the Plans, Map, and Emission Standards and Non-Interference Data (parts 1, 3, and 5 of the Submission Requirements) to the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that its facilities will interfere with emergency communications devices, the applicant shall be given the opportunity to modify the proposal, to avoid interference. If the proposal is not modified, the reviewing department director shall deny the proposal.

3. Director's Action. Within thirty (30) days of the determination that the application is complete, the Planning Director shall take action on the application based on the following criteria:

- a. If the director determines that the facility conforms to the technology height, location and design standards of Sections [15.70.040](#), [15.70.050](#) and [15.70.060](#) of this chapter, he or she shall approve the application with or without conditions of approval.
- b. If the director determines that the facility does not conform to one or more standards, he or she shall inform the applicant of the discrepancy and give the applicant the option of amending the application to eliminate the discrepancy. If the discrepancy is not eliminated, the director shall deny the application.
- c. If the director determines that conformity to standards are in doubt, he or she shall refer the application to the City Council for Special Review under the procedures set out in Paragraph F of this Section.

4. Applicant Notification. After action on the application, the director shall cause the applicant to be notified in writing within five business days of the decision. The applicant may appeal decisions by the director in accordance with Paragraph E of this section.

5. City Manager Action. When a permit for a telecom facility on City-owned property or facilities is approved, the Planning Director shall forward the permit to the City Manager, who shall prepare and execute an Agreement based upon a term and rental amount adopted under City Council policy.

6. City Council Action. Where applicable (including proposals to site facilities in Location Categories in Section 15.70.050[B][1][e-h]), the City Manager shall forward the agreement and final telecom permit to the City Council for final approval. The City Council may approve, approve subject to modifications, or deny the agreement and telecom permit. The City Council retains the right to refuse approval of an agreement at any time and for any reason. Should the City Council deny the agreement, the agreement and permit shall not be executed.

7. Notification to Applicant. The City Clerk shall notify the applicant in writing within five business days of the City Council's decision.

D. Review Process for Private Property. Review of telecom applications for facilities on private property shall be as follows:

1. Filing. Submission of application to the Planning Director and initial staff review. Within thirty (30) days of filing, the Director shall cause the applicant to be notified in writing whether the application is complete. If an application is determined to be not complete, the notification shall identify those parts of the application which are incomplete and shall indicate the manner in which they can be made complete.

2. Emergency Communications Review. At the same time as the Applicant submits an application to the Planning Director, the Applicant shall submit the Plans, Map, and Emission Standards and Non-Interference Data (parts 1, 3, and 5 of the Submission Requirements) to the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications. The review may include a pre-installation test of the facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that its facilities will interfere with emergency communications devices, the applicant shall work with the Police Department to modify the installation or location of facility to avoid interference to the maximum extent practicable.

3. Director's Action. Within thirty (30) days after the determination that the application is complete, the Planning Director shall approve, approve subject to conditions, or deny the telecom permit under the same procedures and criteria as set out in Paragraph C of this Section. The Director shall then cause the applicant to be notified in writing within five business days of the decision. The applicant may appeal decisions by the Director in accordance with Paragraph E of this Section.

E. Appeals to City Council. Within fourteen (14) days of the date of written notification of action by the reviewing department director, the applicant may appeal any denial of the application or any conditions of approval to the City Council. The City Council shall hear all appeals within sixty (60) days of filing of the appeal. The City Council's action on appeals shall be final. If the final action is denial, the City Council shall adopt a Resolution setting forth the reasons for denial.

F. Special Review by Council. Because of their potential for greater-than-usual visual or other impacts on nearby property owners, residents, and businesses, applications for the telecom facilities identified below shall require special review by the City Council.

1. Applicability. Proposals requiring special review include the following:
 - a. Telecom antennas up to fifteen (15) feet above the upper maximum height limit as provided in 15.70.050(A).
 - b. Telecom facilities at locations identified as requiring special review in Section [15.70.050\(B\)](#).
 - c. Any telecom application which the department director determines requires special review in order to serve the public interest.
2. Special Review Procedures. Applications subject to special review shall be reviewed under the following procedures:
 - a. Notification describing the proposal and the date and time of City Council review shall be mailed at least ten (10) days in advance of the City Council review date to property owners of record within three hundred (300) feet of the proposed location of the telecom facility. However, such notification shall not constitute a public hearing notice and non-receipt of such notification shall in no way nullify any approval or denial of a telecom facility.
 - b. No formal public hearing shall be required in conjunction with review of a proposed telecom facility. However, the City Council may hear and consider comments from the public during its review of the application.
3. Council Action. The City Council shall take action on the telecom permit within sixty (60) days after the determination that the application is complete. Applications subject to special review may be approved by the City Council if it makes the following findings:
 - a. The approval is necessary to allow the facility to function as intended and identified alternatives to the proposal are not feasible.
 - b. The approved facility will not result in conditions which are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.

The City Council may approve, approve subject to conditions, or deny the telecom permit.

4. Notification to Applicant. The City Clerk shall notify the applicant in writing within five business days of the City Council's decision. (Ord. 2002-24 § 1 (part), 2002)

15.70.080 Radio Frequency Compliance and Radiation Report.

Within thirty (30) days after installation of a telecom facility, a radio frequency (RF) compliance and radiation report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the facility is operating at the approved frequency and complies with FCC standards for radiation. If the report shows that the facility does not so comply, the reviewing director shall require that use of the facility be suspended until a new report has been submitted confirming such compliance. (Ord. 2002-24 § 1 (part), 2002)

15.70.090 Right to Review or Revoke Permit.

A. Changed Circumstance. Any telecom permit approved pursuant to this Chapter shall be granted by the City with the reservation of the right and jurisdiction to review and modify the permit (including the conditions of approval) based on changed circumstances. Changed circumstances include, but are not limited to, the following in relation to the telecom facility and its specifications in the approved application and/or conditions of approval:

1. An increase in the height or size of any part of the facility;
2. Additional impairment of the views from surrounding properties;
3. Increase in size or change in the shape of the antenna or supporting structure;
4. A change in the facility's color or materials;
5. A substantial change in location on the site;
6. An effective increase in signal output above the maximum permissible exposure (MPE) limits imposed by the radio frequency emissions guidelines of the FCC.

The operator shall notify the Reviewing Department Director of any proposal to cause one or more of the changed circumstances shown in 1-6 above. Any changed circumstance shall require the operator to apply for a modification of the original telecom permit. Before implementing any changed circumstance, the operator must obtain a modified telecom permit and any related building or other permits required by the City.

B. Additional Right to Revoke or Modify Permit. The reservation of right to review any telecom permit granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit. After due notice to the telecom operator, the City Council may revoke any telecom permit upon finding that the facility or the operator has violated any law regulating the telecom facility or has failed to comply with the requirements of this Chapter, the telecom permit, any applicable agreement, or any condition of approval. Upon such revocation, the City Council may require removal of the facility. (Ord. 2002-24 § 1 (part), 2002)

15.70.100 Removal of Telecom Facilities.

A. Discontinued Use. Any operator who intends to abandon or discontinue use of a telecom facility must notify the Planning Director by certified mail no less than thirty (30) days prior to such action. The operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable time as may be approved by the Planning Director, within which to complete one of the following actions:

1. Reactivate use of the telecom facility;
2. Transfer the rights to use the telecom facility to another operator and the operator immediately commences use;
3. Remove the telecom facility and restore the site.

B. Abandonment. Any telecom facility that is not operated for a continuous period of one hundred eighty (180) days or whose operator did not remove the telecom facility in accordance with Subsection A shall be deemed abandoned. Upon a finding of abandonment, the City shall provide notice to the telecom carrier last known to use such facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the telecom facility;
2. Transfer the rights to use the telecom facility to another operator;
3. Remove the telecom facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes the telecom facility, the City may, but shall not be required to, store the removed facility or any part thereof. The owner of the premises upon which the abandoned facility was located and all prior operators of the facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the facility was

located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder. (Ord. 2002-24 § 1 (part), 2002)

15.70.110 Exemption for City Systems.

Systems installed or operated at the direction of the City or its contractor shall be exempt from this chapter. (Ord. 2002-24 § 1 (part), 2002)

ADDITIONAL
MATERIALS
RECEIVED

City of Newport Beach
Planning Commission Meeting
July 19, 2012

**Wireless Telecommunications
Facilities Ordinance
Code Amendment No. 2012-004**

Project Description

- Comprehensive update to existing Wireless Telecommunications Facilities Ordinance
- Intended to:
 - Balance needs of community
 - Increasing demand for wireless networks
 - Mitigate the impact of telecom facilities
 - Reflect changes in federal and state law

Project Description (continued)

- Existing regulations contained in Title 15 and Title 13
- Propose to consolidate into single chapter in Title 20
- New or modified telecom facilities regulated as a land use

Background

- Telecom Ordinance adopted by City Council in October 2002
- Existing regulations have not been updated since adoption by City Council

Background (continued)

- Staff presented overview of existing regulations at a March 2012 City Council Study Session
- City Council directed staff to proceed with revisions to the telecom ordinance

Federal Law and Radio Frequency Emissions Safety

- Federal law preserves local zoning authority, while imposing certain requirements
- State and local agencies are prohibited from regulating on the basis of radio frequency (RF) emissions

Proposed Code Amendment

- Key issues identified in existing ordinance
- Proposed revisions in draft ordinance

Public Notice/Public Hearing Process and Review Authority

Existing Provisions:

- All applications reviewed by Community Development Director as a “telecom permit”
- Community Development Director is review authority for facilities that meet established criteria

Public Notice/Public Hearing Process and Review Authority

Existing Provisions (continued):

- City Council is review authority for:
 - Facilities that do not conform,
 - Larger more conspicuous facilities, and/or
 - Facilities located in certain residential districts
- Neither review process requires a public notice or a public hearing

Public Notice/Public Hearing Process and Review Authority

Proposed Revision:

- Applicants required to apply for Minor Use Permit; Conditional Use Permit; or Limited Term Permit
- Public notice/public hearing required
- Zoning Administrator or Planning Commission designated review authorities

Appeal Process

Existing Provisions:

- Only applicant may appeal decision by the Community Development Director

Appeal Process

Proposed Revision:

- Appeal process consistent with existing provisions in the Zoning Code
- Planning Commission would be appellant authority on Zoning Administrator decisions
- City Council would be appellant authority on Planning Commission decisions

Installations in the Public Right-of-Way

Existing Provisions:

- Specific procedures not provided for facilities installed in the public right-of-way

Installations in the Public Right-of-Way

Proposed Revision:

- Process and design standards included
- Public hearings would be conducted
- Building and/or encroachment permits would be required





Design Standards and Criteria

Existing Provisions:

- Standards do not encourage applicants to design camouflaged facilities
- Standards have not been updated to reflect changes in technology

Design Standards and Criteria

Proposed Revision:

- Design standards updated to encourage camouflage
- Facilities visually compatible and/or inconspicuous reviewed by Zoning Admin.
- Larger or conspicuous facilities reviewed by Planning Commission

Building/Roof-top Mounted Antennas



Building Mounted Antennas, Camouflaged



Deviation to Height Limitations and Location Requirements

Existing Provisions:

- Do not include process to request to modify or deviate

Deviation to Height Limitations and Location Requirements

Proposed Revision:

- With regulations in Zoning Code, applicants could request a Variance
- Review and public hearings conducted Planning Commission

Setback Requirements

Existing Provisions:

- Setbacks measured from the part of facility closest to the lot line or structure
- Facilities prohibited from being located in required setbacks, unless special approval by City Council

Setback Requirements

Proposed Revision:

- Updated to provide additional “fall zone” for ground-mounted “Wireless Towers”
- Additional setback provided for safety purposes; would be the greater of either:
 - Code-required setback; or
 - 110% of the height of the “Wireless Tower”

Modification of Existing Telecom Facilities

Existing Provisions:

- Allows City to review and modify a telecom permit based on “changed circumstances”

Modification of Existing Telecom Facilities

Proposed Revision:

- Updated regulations consistent with federal law
- Changes less than 5% subject to ministerial review and approval
- Changes 5% or more require processing of a new discretionary application

Zoning District Land Uses and Permit Requirements

Existing Provisions:

- Facilities prohibited unless given special approval by City Council on:
 - Common area or non-residential lots
 - Any required setback
 - Multifamily structures
- Also prohibited on:
 - Residential lots
 - Open Space district, unless on utility tower

Zoning District Land Uses and Permit Requirements

Proposed Revision:

- Updated to prohibit telecom facilities on:
 - Single-family development
 - Two-family development
 - Multi-family development of 4 units or less
- Exception added to allow telecom facilities in Open Space when co-located on existing telecom facility or site

Conclusion

- Staff welcomes public comments on the draft ordinance; and
- Recommends continuance to August 23, 2012



Item 5a: Additional Materials Received
Planning Commission July 19, 2012
PA2012-057

Setting the new standard
Core Development Services
2749 Saturn Street
Brea, CA 92821
714) 729-8404
mfelten@core.us.com

7/18/12

Janet Johnson Brown
Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

Dear Ms. Brown,

On behalf of Core Communications, I would like to thank for the opportunity to provide feedback regarding the City's proposed Wireless Communications Facilities Ordinance. I commend planning staff and the City for determining that an updated ordinance is needed to allow for a uniform set of standards that each application will be subject to.

Below are our comments regarding the proposed ordinance amendment. Given our many concerns I feel it would be best if the city would continue this item to a later date to allow for an outreach meeting with the industry. I have found that a dialogue with City staff allows for the industry to understand staff's intent behind each requirement and also allows staff to understand the possible effects certain requirements may have. By understanding the goals and intent of both sides I feel that City staff will develop an ordinance that continues to achieve the City's objectives and protects the wellbeing of all those involved.

The following discussion highlights are an area of a concern:

1. Public Notice/Public Hearing Process and Review Authority, specifically Section 20.49.070(G): It should not necessary for all proposed projects to go through the hearing process. The City should utilize a set of objective design standards and if a carrier meets them, there should be no reason to go before any discretionary body, regardless of location. A streamlined process, such as an administrative approval, is recommended for sites that are co-located, building or roof-mounted, or located on utility infrastructures such as SCE towers. The code should explore incentives for applicants to bring forth quality proposals, such as a simplified review process. The City of Anaheim's code demonstrates this type of review, which has increased the wireless telecommunications coverage in the City and while upholding the quality of installations proposed.
2. Installations in the Public Right-of-Way, specifically Section 20.49.050(C): Requiring a full conditional use permit for all proposals in the public right-of-way seems overly cumbersome. If planning review is determined to be absolutely necessary, I recommended a streamlined administrative process. Public right-of-way sites are typically located on existing structures, such as light poles, therefore the aesthetic impact is minimal. I recommend only requiring specific design standards for these specific sites that the carrier will have to adhere to and if those

design standards are followed the site is approved. If the site is unable to meet the City's design standards, then at that time the discretionary planning process may be required. For example, the City of Laguna Niguel has design standards that were adopted by the City Council. If a proposal is unable to conform to those standards then it must go through the planning process. Another example is the City of Tustin which only requires public right-of-way sites to go through an administrative design review process. Furthermore, subsection (1) requires all support equipment be placed below grade. As you may or may not be aware the industry tries to stay away from vaults at all costs. Facilities flood due to rains and the required flush-mount vents. When this occurs, sites go "off air", creating a gap in coverage, not to mention the fact that it could cost hundreds of thousands of dollars to repair even one facility. When a site goes "off air" the community will lose needed and required coverage. Additionally, some carriers' facilities often include an emergency generator which requires ventilations and specific clearance requirements that would not be able to be enclosed or vaulted. While it is understood that often Public Right-of-Way installations have very little space for equipment and vaulting may be the only option, there are occasionally circumstances where the equipment can be located above ground while being screened. Therefore, by limiting equipment to be undergrounded only, those occasions are restricted.

3. Design Standards and Criteria, specifically Section 20.49.060: Again, I commend the City for instituting design requirements; however, as stated above should the city institute a set of objective design standards and the carrier meets them, there should be no reason to go before any discretionary body, regardless of location. In this situation the aesthetic impacts are no longer of a concern given the facility meets code. A streamlined process, such as an administrative approval, is recommended for sites that meet the required design standards. Furthermore, the code should explore incentives for applicants to bring forth quality proposals, such as a streamlined review process.
4. Deviation to Height Limitations and Location Requirements, specifically Section 20.49.060(C)(1). Subsection (c) should be revisited as several schools, churches, and other public institutions are often in residentially zoned districts and typically they have flagpoles in front of their establishments. In the event there are no other options to locate antennas and equipment within a steeple, some other portion of the building, or a more appropriate stealth design; prohibiting flagpoles in residential zones may inadvertently cause a prohibition of service. In those cases where the current proposed code would allow a flagpole installation, 35' is an extremely restrictive height. As previously stated, wireless telecommunications antennas require line of site free of obstructions. Given that a great majority of buildings within the City are multiple stories and some areas of the City have topography challenges, 35' will not likely provide the necessary line of site. Therefore, it is recommended that no height limit be specified. The restriction of a 24" diameter pole is also extremely limiting. Often carriers

require at least 30" or more due to different technology and azimuth requirements. Again, it is recommended that a larger diameter measurement be provided or the size is left unspecified. Height may also be an issue in Subsection (d) having adverse implications on roof-mounted installations. The City is a beach community and often buildings are constructed to the maximum height limit. Only allowing five feet above base height limit may not be enough to allow for screening and many carriers' antenna technology. Some carriers have antennas in lengths of up to eight feet. Additionally, five feet may not be enough to meet EME safety standards depending on where on the rooftop the antennas are proposed. Therefore, it is extremely likely that majority of all rooftop installations will be greater than five feet above the base height limit requiring heightened review. This could potentially cause an architecturally integrated rooftop installation to proceed through a longer, more cumbersome process because it cannot meet the narrow five foot height limitation.

5. Setback Requirements, specifically Section 20.49.060(D): Wireless facilities are required to go through building plan check and demonstrate that they are structurally sound, just as any other building in the City would be required. However, no other building in the City is required to provide a "fall zone", yet the proposed wireless code amendment will require a 110% "fall zone" setback for any new ground mounted wireless facility. It is unclear why wireless telecommunications facilities would be held to a different standard. Additionally, as previously stated, wireless telecommunications antennas must have an unobstructed line of site which will often require the antennas to be much taller than the 25' example stated in the staff report. In fact, the average height of concealed ground mounted facilities will likely be around 55', to allow for a 45' centerline of antennas and additional camouflaging above the antennas. Therefore, if a 55' ground-mounted facility were proposed the 110% setback would be 60.5' from all properties lines, which would likely inadvertently prohibit any ground-mounted wireless facilities on the majority of properties within the City.
6. Modification of Existing Telecom Facilities: Given the recent "Tax Relief Act" legislation, I recommend the City handle all modification requests as ministerial permits. Limiting any change to 5% or less, as the current ordinance amendment proposes, may potentially prohibit any maintenance or equipment changes/additions that will increase the efficiency or technology of the facility .
7. Zoning District Land Uses and Permit Requirements: The City should not prohibit a wireless installation in any zone. This opens the possibility of the City prohibiting telecommunications services. Prohibiting an installation outright in any zone may cause the City to unknowingly create a barrier to entry which inadvertently regulates the business affairs of a wireless company. This is likely not the intention of the City and therefore I recommend that the City adopt specific design standards for the residential and open space zones to protect the integrity of the area. Also, many properties may be zoned residential, but are not used for residential



purposes, which should be taken into consideration. It should be noted that many cities have found having wireless facilities in their parks zoned either residential or open space has created an avenue of revenue for the City.

The entire ordinance is quite lengthy, somewhat burdensome and may provide a barrier for wireless services to be provided to the Newport Beach community. Given the concerns explained in the text above, I feel it would be best if the City would continue this item to a later date to allow for an outreach meeting with the industry. I would like to thank the City for notifying us of this proposed amendment and look forward to working together in crafting a lawful ordinance that protects the residents and businesses of the City of Newport Beach along with operation of the wireless industry.

Yours truly,

Michelle Felten

Michelle Felten
Senior Project Manager



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Delivered via Email

The Honorable Michael Toerge
Chairman, Planning Commission
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

**Subject: Proposed Amendment to Wireless Telecommunications Facilities Ordinance (PA2012-057),
Code Amendment No. 2012-004**

Dear Chairman Toerge:

AT&T appreciates the opportunity to provide comments to the Planning Commission on the proposed amendment to the City of Newport Beach's (City) Wireless Telecommunications Facilities Ordinance. AT&T has been providing communications service in Southern California for over a hundred years and its affiliate has been providing wireless telecommunications services since the late 1980's. AT&T is eager to work with the City in its efforts to address concerns about placement of wireless facilities within the City.

AT&T is most concerned about aspects of the proposed amendments that would directly impact the ability of the wireless telecommunications industry to provide service to residents, businesses and visitors in Newport Beach, who rely on cellphones and other wireless devices in their daily lives. As you are no doubt aware, the proposed amendments would affect not only cellphones, but wireless data of all kinds (including audio signals, video signals, computer files, e-mail and data of all kinds that now use wireless transmission) are affected.

Over all, we believe the proposed amendments are overly specific and restrictive and could give rise to a host of future issues and problems that may require further ordinance modifications. For example, by providing unique definitions of terms like "base station" that deviate from specific federal law definitions and is but one component of a wireless facility under 47 U.S.C.A 332, the City risks running afoul of Section 332 protections, creating a prohibition on wireless service, and having the entire ordinance preempted. We recommend that the City instead treat wireless facilities more like other facilities and not regulate them. Below, we provide the applicable law and our specific concerns.

APPLICABLE LAW

The federal Telecommunications Act of 1996, 47 U.S.C.A. 151 et seq. (1996) regulates the deployment of wireless telecommunication service. Section 332(c)(3) gives the FCC certain authority that is exclusive and which preempts conflicting acts by state or local governments. Section 332(c)(3)(7) of the Act, while recognizing that local zoning authority is preserved, requires that local regulation not "unreasonably discriminate among providers of functionally equivalent services" and not "prohibit or have the effect of prohibiting the provision of personal wireless services."

Also recently enacted at the federal level, section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (47 U.S.C.A. § 1455(a)(2012)) provides that “a State or local government may not deny, and shall approve, any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” An “eligible facilities request” includes any request to modify an existing wireless tower or base station that involves collocation, removal, or replacement of transmission equipment. (Id.)

California state law also impacts placement of communication facilities within the public rights-of-way. Wireless and wireline carriers, as “telephone corporations,” have access rights to the public rights-of-way under Section 7901 of the California Public Utilities Code. A telephone corporation enjoys a vested right under Section 7901 to construct “telephone lines” and “necessary fixtures” “along and upon any public road.” California courts have long upheld this vested right to enter and use the public right-of-way.

In our view, the City possesses only a limited right to curtail the rights of telephone corporations under Section 7901. Section 7901.1(a) grants to the City only the ability to exercise “reasonable control as to the time, place and manner in which roads . . . are accessed.” Section 7901.1(b) provides that any municipal regulations “at a minimum, be applied to all entities in an equivalent manner,” thereby imposing a duty on the City to regulate in a non-discriminatory manner.

COMMENTS

As mentioned above, some of the provisions of the proposed amendments might constitute a prohibition of services under the federal Telecommunications Act. A number of the special requirements outlined in the Proposed Ordinance relating to wireless facilities placed in the public rights-of-way also appear to go well beyond the regulation permitted under Section 7901 of the Public Utility Code. Finally, we believe the proposed amendment conflicts with Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. We identify some of the problematic provisions in more detail below.

Section 20.49.030 – Definitions

Base Station – The definition provided by City for “Base Station” is too restrictive and should not exclude DAS. Alternatively, we request the City’s language be modified more broadly to: “A Telecom Facility installed and operated by the Telecom Operator for signal transmission and reception.” The second sentence regarding antennas and DAS should be excluded from this definition.

Wireless Tower – Only the first sentence should apply. The remaining part of this definition inappropriately narrows the meaning of a wireless tower.

Section 20.49.040 – Available Technology

We do not believe this section is relevant. It attempts to codify the choice of technology used in sites. Although it does not explicitly state various technologies, it is inappropriate for the City to dictate what technology carriers select. For example, under this section, the City could insist that AT&T use DAS or any other “efficient, diminutive, and least obtrusive available technology” as opposed to a Macro Site.

Section 20.49.050 (B) - Prohibited Locations

We do not believe the City should impose blanket prohibitions on certain locations within the City’s Jurisdiction. What if the only available site is in a prohibited location? Carriers should have the

opportunity to at least attempt or work with the City to build a site at any location in the City if that is the only available means.

Section 20.49.060 – General Development and Design Standards (Also in Same Section Subsection (E))

Some of the stealthing standards and guidelines in this section and referenced in other sections may not be feasible, such as using surrounding vegetation and structures to camouflage a site. To the extent that such techniques need only be considered but are not required to be implemented, this section may be workable. However, if the City intends to mandate these guidelines and standards, that is problematic, as natural vegetation and structures can impair or block RF signals.

Section 20.49.060 (C) - Height

There are maximum height standards which may not work from an RF perspective, although we recognize that variances can be granted.

Section 20.49.060 (D) - Setback

The setback requirement for a wireless tower is 110% of the height of the tower including the antennas or enclosures. Newport Beach is a densely populated area and this setback requirement could effectively prohibit new wireless towers as this requirement may be very difficult to meet in many parts of the City.

Section 20.49.100 – Modification of Existing Telecom Facilities

This section appears to be an attempt to codify Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012. Under Section 6409(a) any facility modification that falls under and complies with Section 6409 must be approved by the City. Section 6409 is not discretionary. We do not believe the City should set standards and definitions that restrict or define the applicability of the Federal Statute, as it appears to do in this section. It is appropriate for the City to describe how it will comply, but it should not attempt to redefine the elements of Section 6409.

We hope the City finds these comments to the proposed amendment helpful. We welcome the opportunity to work with the City staff to discuss our legal and practical concerns and to develop solutions amenable to both AT&T and the City.

Sincerely,



Kyla C. Powell

Cc: Bradley Hillgren, Vice Chair, City of Newport Beach Planning Commission
Members, City of Newport Beach Planning Commission
Janet Johnson Brown, Associate Planner



July 19, 2012

VIA ELECTRONIC MAIL

Newport Beach Planning Commission
c/o Janet Johnson Brown, Associate Planner
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663
jbrown@newportbeachca.gov

Re: Proposed Amendments to Wireless Telecommunications Facilities Ordinance

Dear Ms. Brown,

PCIA—The Wireless Infrastructure Association (“PCIA”)¹ and the California Wireless Association (“CalWA”)² writes to provide comment on the City of Newport Beach’s proposed amendment to the Newport Beach Municipal Code to update regulations regarding wireless telecommunications facilities in light of the scheduled public hearing on the matter before the Planning Commission on Thursday, July 19, 2012. Attached please find the proposed amendments marked with comments. PCIA and CalWA respectfully request that Planning Commission defer action on this item until the industry has had an opportunity to sit down with staff and discuss the concerns reflected within this letter and in the attached mark-up.

PCIA and CalWA applaud the City of Newport Beach for recognizing that there have been numerous changes in Federal and State law regarding local regulation of wireless facilities, as well as a tremendous increase in the demand for wireless services that required the industry to change how it responds and keeps up with demand from its subscribers, especially in sophisticated communities like Newport Beach. We encourage the City to craft an ordinance that enables logical and intelligent deployment with an objective set of standards that comply with state and federal law and allows the timely provision of quality wireless service. To this end, in order to ensure that Newport Beach’s efforts to modernize its wireless ordinance are as comprehensive as possible, PCIA and CalWA offer the attached mark-up of the draft amendments.

¹PCIA is the national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate towers, rooftop wireless sites, and other facilities for the provision of all types of wireless, broadcasting and telecommunications services. With a mandate to facilitate the deployment of wireless infrastructure, PCIA and its members partner with communities across the nation to effect solutions for wireless infrastructure deployment that are responsive to the unique sensitivities and concerns of these communities.

²CalWA is a non-profit organization made up of volunteers who work in the wireless/telecommunications industry throughout California. Its goal is to raise awareness about the benefits of and to promote the wireless industry, to educate the public and political leaders on issues of importance to the wireless industry, and to cultivate working relationships within and between the industry, the public and political leaders.



Despite the importance of wireless services and its potential for job creation, local review of the placement of wireless facilities remains a persistent barrier to the deployment of wireless infrastructure. For example, the proposed amendments to Newport Beach's Municipal Code could better facilitate the deployment of wireless infrastructure in order to bring wireless service to Newport Beach's residents. PCIA and CalWA hope to work together with the Planning Commission to find a solution for wireless infrastructure deployment that is responsive to the City of Newport Beach's needs and concerns. For this reason, PCIA and CalWA urge that Planning Commission defer action on this item to allow time to consider and discuss the industry's concerns.

The Need for Wireless Infrastructure

Wireless services, from basic voice communication to mobile broadband, enable communication, productivity, mobility, and public safety. Wireless infrastructure is the backbone of wireless networks; without it, wireless services cannot be delivered to users. Wireless infrastructure enables use of spectrum by providing the vital link between the end-user and the network. The strategic deployment of wireless infrastructure improves the efficient use of limited spectrum resources, which in turn improves the performance of wireless services.

Wireless providers are currently undertaking a multi-faceted effort to deliver next-generation wireless services, such as 4G LTE, in addition to ensuring that current and next-generation networks have the capacity to handle the surge in traffic that comes with the increased adoption rates of smartphones, tablets and other data devices. Wireless networks must adapt to growing capacity demands due to an 1,800 percent increase in traffic on U.S. wireless networks in the last four years³ and a projected growth of eighteen times current levels of mobile data traffic in the next five years.⁴ Mobile Internet users are projected to outnumber wireline Internet users by 2015, when a majority of Americans will utilize a wireless device as their primary internet access tool.⁵ This will result in two billion networked mobile devices by 2015.⁶

The need for rapid deployment extends beyond mere consumer convenience. More than 70 percent of all emergency calls are placed using a wireless device.⁷ The ability to access fire, rescue and police services may be significantly hindered without wireless infrastructure, especially for those relying on wireless as their sole form of voice communications. As noted by the Federal Communications Commission ("FCC"),

[T]he deployment of facilities without unreasonable delay is vital to promote public safety, including the availability of wireless 911, throughout the nation. The importance of wireless communications for public safety is critical, especially as consumers

³ Mobile Future, 2011 Mobile Year In Review (Dec. 2011), *available at* <http://mobilefuture.org/page/-/images/2011-MYIR.pdf>.

⁴ Quentin Hardy, The Explosion of Mobile Video, N.Y. Times, Feb. 14, 2012, *available at* <http://bits.blogs.nytimes.com/2012/02/14/the-explosion-of-mobile-video/>.

⁵ Hayley Tsukayama, IDC: Mobile Internet Users to Outnumber Wireline Users by 2015, Washington Post, Sept. 12, 2011, *available at* http://www.washingtonpost.com/blogs/post-tech/post/idc-mobile-internet-users-to-outnumber-wireline-users-by-2015/2011/09/12/gIAkZP7MK_blog.html?wprss=post-tech.

⁶ Mobile Future, 2011 Mobile Year In Review.

⁷ FCC.gov, Guide: Wireless 911 Services, *available at* <http://www.fcc.gov/guides/wireless-911-services>.



increasingly rely upon their personal wireless service devices as their primary method of communication.⁸

As NENA observes:

Calls must be able to be made from as many locations as possible and dropped calls must be prevented. This is especially true for wireless 9-1-1 calls which must get through to the right Public Safety Answering Point (“PSAP”) and must be as accurate as technically possible to ensure an effective response. Increased availability and reliability of commercial and public safety wireless service, along with improved 9-1-1 location accuracy, all depend on the presence of sufficient wireless towers.⁹

For this reason, decisions on siting requests made by the personal wireless service industry were not intended by Congress to be subjected “to any but the generally applicable time frames for zoning decision[s].”¹⁰ Thus, the adoption of special procedural schemes unique to wireless siting requests should be avoided.

The FCC Shotclock Declaratory Ruling and the California Permit Streamlining Act

In addition to the provisions of Section 337(c)(7) of the Communications Act of 1934 referred to in the staff report, subsection (B)(ii) of that section contains another requirement that the City should keep in mind when crafting its new ordinance. That provision requires that a “local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.”

The FCC recently adopted a Declaratory Ruling on November 18, 2009 under this subsection holding that “a ‘reasonable period of time’ is, presumptively, 90 days to process personal wireless service facility siting applications requesting collocations, and, also presumptively, 150 days to process all other applications.”¹¹ Given the rate at which demand for advanced wireless services has been growing, and in particular the growth in the demand for bandwidth as a result of adoption of smart phones and wireless-enabled laptops and tablets, the need for speedy local approvals of proposed wireless deployments has become truly critical to providing the wireless services consumers demand.

Indeed, the FCC’s presumptive timeframe for action may be superfluous given that California law has, for decades, contained absolute deadlines by which action must be taken. As you are no doubt aware, the California Permit Streamlining Act imposes a 60-day time limit for approving or denying a requested permit after a project has been determined to be categorically

⁸ *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24 FCC Rcd 13994, 14021 ¶ 71 (2009) (“Shot Clock Ruling”), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff’d*, *City of Arlington, Tex., et al. v. FCC*, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

⁹ *Shot Clock Ruling*, at 36.

¹⁰ H.R. Conf. Rep. No. 104-458, 104th Congress, 2nd Sess. 208 (1996).

¹¹ *Shotclock Ruling*.



exempt from CEQA¹² or a negative declaration or mitigated negative declaration has been adopted.¹³

The Wireless Provisions in Middle Class Tax Relief and Job Creation Act of 2012

Staff failed to mention the Middle Class Tax Relief and Job Creation Act of 2012, enacted with bipartisan support and signed into law by President Obama on February 22, 2012. One of the measures included in the Act was the creation of a nationwide interoperable broadband network for first responders. In addition to authorizing the FCC to allocate necessary spectrum for this new interoperable network, the Act also contained provisions designed to establish voluntary incentive auctions of wireless spectrum, which are expected to raise \$15 billion over the next eleven years. Seven billion dollars of the auction proceeds have been allocated for public safety broadband network build out.

The Act reflects an implicit acknowledgement that realizing the financial viability of the spectrum auctioned depends on the ease with which purchasers can deploy the infrastructure needed to utilize it. At the same time, it allays local concerns over the potential impact of the construction of new sites. In a carefully crafted attempt to address both industry and local concerns, Section 6409 of the Act streamlines, and thereby incentivizes the use of, modification of existing sites in lieu of new builds. Although the staff proposals reflect a similar recognition of the need for streamlined review of modifications, PCIA and CalWA provide herewith a detailed explanation of this recent law due to concerns that the definitions provided in the report fail to reflect those adopted and utilized by the FCC.

Section 6409 of the Act requires state and local governments to approve an eligible facilities request for the modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. Section 6409 applies to "eligible facilities requests" for modification of existing wireless towers and base stations. The Act defines "eligible facilities request" as any request for modification of an existing wireless tower or base station that involves:

- Collocation of new transmission equipment;
- Removal of transmission equipment; or
- Replacement of transmission equipment.

Many of the terms employed in the section are concepts that were hammered out in negotiations between local government and industry representatives in an agreement that was adopted by reference in regulations promulgated by the FCC. Thus, for example, "collocation" has been defined as "the mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes."¹⁴

¹²Gov. Code § 65950(a)(4).

¹³Gov. Code § 65950(a)(3).

¹⁴Nationwide Programmatic Agreement for the Collocation of Wireless Antennas (2001), available at 47 C.F.R. Part I, Appendix B ("Collocation Agreement"). See also *Petition for Declaratory Ruling To Clarify Provisions of Section 332(C)(7)(B) To Ensure Timely Siting Review and To Preempt Under Section 253 State and Local Ordinances That Classify All Wireless Siting Proposals as Requiring a Variance*, Declaratory Ruling, 24

The same agreement also addressed the issue of what constitutes a substantial change in the size of a tower:

- The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or
- The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.¹⁵

In this agreement, a "tower" is defined as "any structure built for the sole or primary purpose of supporting FCC-licensed antennas and their associated facilities."¹⁶ While the concept of a "base station" is not referenced in the agreement, the term has a long-established meaning consistently used throughout both FCC regulations and case law, namely a fixed location from which wireless signals are transmitted. For example, FCC regulations define a "base station" as "[a] station at a specified site authorized to communicate with mobile stations;" or "A land station in the land mobile service."¹⁷ We urge the Planning Commission to use these well recognized definitions within its Ordinance.

FCC Rcd 13994, 14021 1171 (2009) ("*Shot Clock Ruling*"), *recon. denied*, 25 FCC Rcd 11157 (2010), *aff'd*, City of Arlington, Tex., et al. v. FCC, 2012 U.S. App. LEXIS 1252 (5th Cir. 2012).

¹⁵Collocation Agreement, note, above.

¹⁶*Id.*

¹⁷See, e.g., 47 C.F.R. §§24.5, 90.7.



Conclusion

Reliable wireless communications are no longer a luxury. Wireless facilities provide a platform for broadband accessibility, creating a link from the City of Newport Beach to the world through high-speed Internet access. The City of Newport Beach has an opportunity to facilitate expanded wireless coverage to its citizens, businesses, and first responders by moving forward with amending its code in consideration of the wireless infrastructure industries' suggestions provided herewith.

PCIA and CalWA hope to participate in the ordinance revision process as it develops, if Planning Commission defers action on this item to consider the industry's concerns. We appreciate your support to further our mutual goal of implementing and deploying responsible and timely wireless infrastructure to serve the City of Newport Beach, CA.

Sincerely,

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EXHIBIT "A"

Chapter 20.49 – Wireless Telecommunications Facilities

Sections:

- 20.49.010 – Purpose and Intent
- 20.49.020 – General Provisions
- 20.49.030 – Definitions
- 20.49.040 – Available Technology
- 20.49.050 – Location Preferences
- 20.49.060 – General Development and Design Standards
- 20.49.070 – Permit Review Procedures
- 20.49.080 – Permit Implementation, Time Limits, Duration, and Appeals
- 20.49.090 – Agreement for Use of City-owned or City-held Trust Property
- 20.49.100 – Modification of Existing Telecom Facilities
- 20.49.110 – Operational and Radio Frequency Compliance and Emissions Report
- 20.49.120 – Right to Review or Revoke Permit
- 20.49.130 – Removal of Telecom Facilities

CalWA Comment No. 1: Some recognition that this land use is in fact a "utility" (as defined in the States Constitution) and additional tolerance and balance similarly to how other utilities are viewed aesthetically should be afforded this critical land use as well. This "purpose" raises aesthetics above all other considerations unfairly as compared to other utility land uses.



20.49.010 – Purpose and Intent.

A. Purpose. The purpose of this Chapter is to provide for wireless telecommunication facilities ("Telecom Facilities") on public and private property consistent with federal law while ensuring public safety, reducing the visual effects of telecom equipment on public streetscapes, protecting scenic, ocean and coastal public views, and otherwise mitigating the impacts of such facilities. More specifically, the regulations contained herein are intended to:


1. Encourage the location of Antennas in non-residential areas.
2. Strongly encourage Collocation at new and existing Antenna sites.
3. Encourage Telecom Facilities to be located in areas where adverse impacts on the community and public views are minimized.

B. The provisions of this Chapter are not intended and shall not be interpreted to prohibit or to have the effect of prohibiting telecom services. This Chapter shall be applied to providers, operators, and maintainers of wireless services regardless of whether authorized by state or federal regulations. This Chapter shall not be applied in such a manner as to unreasonably discriminate among providers of functionally equivalent telecom services.

20.49.020 – General Provisions.

A. Applicability. These regulations are applicable to all Telecom Facilities providing voice and/or data transmission such as, but not limited to, cell phone, internet and radio relay stations.

B. Permit and/or Agreement Required.

1. Prior to construction of any Telecom Facility in the City, the applicant shall obtain a Minor Use Permit (MUP), Conditional Use Permit (CUP), or Limited Term Permit (LTP), depending on the proposed location and Antenna Classes, in accordance with Section 20.49.070 (Permit Review Procedures).
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2. Applicants who obtain a MUP, CUP or LTP (and an encroachment permit, if required) for any Telecom Facility approved to be located on any City-owned property or City-held Trust property, shall enter into an agreement prepared and executed by the City Manager or its designee prior to construction of the Facility, consistent with Section 20.49.090 (Agreement for Use of City-owned or City-held Trust Property).

C. Exempt Facilities. The following types of facilities are exempt from the provisions of this Chapter:

1. Amateur radio antennas and receiving satellite dish antennas, and citizen band radio antennas regulated by Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities).
2. Dish and other antennas subject to the FCC Over-the-Air Reception Devices ("OTARD") rule, 47 C.F.R. § 1.4000 that are designed and used to receive video programming signals from (a) direct broadcast satellite services, or (b) television broadcast stations, or (c) for wireless cable service.
3. During an emergency, as defined by Title 2 of the NBMC, the City Manager, Director of Emergency Services or Assistant Director of Emergency Services shall have the authority to approve the placement of a Telecom Facility in any district on a temporary basis not exceeding ninety (90) calendar days from the date of authorization. Such authorization may be extended by the City on a showing of good cause.
4. Facilities exempt from some or all of the provisions of this Chapter by operation of state or federal law to the extent so determined by the City.
5. Systems installed or operated at the direction of the City or its contractor.

D. Other Regulations. Notwithstanding the provisions of this Chapter, all Telecom Facilities within the City shall comply with the following requirements:

1. Rules, regulations, policies, or conditions in any permit, license, or agreement issued by a local, state or federal agency which has jurisdiction over the Telecom Facility.
2. Rules, regulations and standards of the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC).

E. Regulations not in Conflict or Preempted. All Telecom Facilities within the City shall comply with the following requirements unless in conflict with or preempted by the provisions of this Chapter:

1. All applicable City design guidelines and standards.
2. Requirements established by any other provision of the Municipal Code and by any other ordinance and regulation of the City.

F. Legal Nonconforming Facility. Any Telecom Facility that is lawfully constructed, erected, or approved prior to the effective date of this Chapter, or for which the application for a proposed Telecom Facility is deemed complete prior to the effective date of this Chapter, in compliance with all applicable laws, and which Facility does not conform to the requirements of this Chapter shall be accepted and allowed as a legal nonconforming Facility if otherwise approved and constructed. Legal nonconforming Telecom Facilities shall comply at all times with the laws, ordinances, and regulations in effect at the time the application was deemed complete, and any applicable federal and state laws as they may be amended or enacted, and shall at all times comply with any conditions of approval.

20.49.030 – Definitions.

For the purposes of this Chapter, the following definitions shall apply:

Antenna. Antenna means a device used to transmit and/or receive radio or electromagnetic waves between earth and/or satellite-based systems, such as reflecting discs, panels, microwave dishes, whip antennas, Antennas, arrays, or other similar devices.

Antenna Array. Antenna Array means Antennas having transmission and/or reception elements extending in more than one direction, and directional Antennas mounted upon and rotated through a vertical mast or tower interconnecting the beam and Antenna support, all of which elements are deemed to be part of the Antenna.

Antenna Classes. Antenna Classes are Telecom Facilities and the attendant Support Equipment separated into distinct “antenna classes.”

Base Station. Base Station means the electronic equipment at a Telecom Facility installed and operated by the Telecom Operator that together perform the initial signal transmission and signal control functions. Base Station does not include the Antennas and Antenna support structure, or the Support Equipment, nor does it include any portion of DAS.

City-owned or City-held Trust Property. City-owned or City-held Trust Property means all real property and improvements owned, operated or controlled by the City, other than the public right-of-way, within the City’s jurisdiction, including but is not limited to City Hall, Police and Fire facilities, recreational facilities, parks, libraries, monuments, signs, streetlights and traffic control standards.

Collocation. Collocation means an arrangement whereby multiple Telecom Facilities are installed on the same building or structure.

Distributed Antenna System, DAS. Distributed Antenna System (DAS) means a network of one or more Antennas and fiber optic nodes typically mounted to streetlight poles, or utility structures, which provide access and signal transfer services to one or more third-party wireless service providers. DAS also includes the equipment location, sometimes called a “hub” or “hotel” where the DAS network is interconnected with third-party wireless service providers to provide the signal transfer services.

FCC. FCC means the Federal Communications Commission, the federal regulatory agency charged with regulating interstate and international communications by radio, television, wire, satellite, and cable.

Feasible. Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account environmental, physical, legal and technological factors.

Lattice Tower. Lattice Tower means a freestanding open framework structure used to support Antennas, typically with three or four support legs of open metal crossbeams or crossbars.

Monopole. Monopole means a single free-standing pole or pole-based structure solely used to act as or support a Telecom Antenna or Antenna Arrays.

Operator or Telecom Operator. Operator or Telecom Operator means any person, firm, corporation, company, or other entity that directly or indirectly owns, leases, runs, manages, or otherwise controls a Telecom Facility or facilities within the City.

Public Right-of-Way. Public Right-of-Way or ("PROW") means the improved or unimproved surface of any street, or similar public way of any nature, dedicated or improved for vehicular, bicycle, and/or pedestrian related use. PROW includes public streets, roads, lanes, alleys, sidewalks, medians, parkways and landscaped lots.

Stealth or Stealth Facility. Stealth or Stealth Facility means a Telecom Facility in which the Antenna, and the Support Equipment, are completely hidden from view in a monument, cupola, pole-based structure, or other concealing structure which either mimics, or which also serves as, a natural or architectural feature. Concealing structures which are obviously not such a natural or architectural feature to the average observer do not qualify within this definition.

Support Equipment. Support Equipment means the physical, electrical and/or electronic equipment included within a Telecom Facility used to house, power, and/or contribute to the processing of signals from or to the Facility's Antenna or Antennas, including but not limited to cabling, air conditioning units, equipment cabinets, pedestals, and electric service meters.

Support Equipment does not include the Base Station, DAS, Antennas or the building or structure to which the Antennas are attached.

Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or Facility. Telecommunication(s) Facility, Telecom Facility, Telecom Facilities, Wireless Telecommunications Facility, or simply Facility or Facilities means an installation that sends and/or receives wireless radio frequency signals or electromagnetic waves, including but not limited to directional, omni-directional and parabolic antennas, structures or towers to support receiving and/or transmitting devices, supporting equipment and structures, and the land or structure on which they are all situated. The term does not include mobile transmitting devices, such as vehicle or hand held radios/telephones and their associated transmitting antennas.

Utility Pole. Utility Pole means a single freestanding pole used to support services provided by a public or private utility provider.

Utility Tower. Utility Tower shall mean an open framework structure (see lattice tower) or steel pole used to support electric transmission facilities.

Wireless Tower. Wireless Tower means any structure built for the sole or primary purpose of supporting Antennas used to provide wireless services authorized by the FCC. A Distributed Antenna System (DAS) installed pursuant to a Certificate of Public Convenience and Necessity (CPCN) issued by the California Public Utilities Commission on a water tower, utility tower, street light, or other structures built or rebuilt or replaced primarily for a purpose other than supporting wireless services authorized by the FCC, including any structure installed pursuant to California Public Utility Code Section 7901, is not a Wireless Tower for purposes of this definition. For an example only, a prior-existing light standard which is replaced with a new light standard to permit the addition of Antennas shall not be considered a Wireless Tower, but rather a replacement light standard.

20.49.040 – Available Technology.

All Telecom Facilities approved under this Chapter shall utilize the most efficient, diminutive, and least obtrusive available technology in order to minimize the number of Telecom Facilities in the City and reduce their visual impact on the community and public views.

20.49.050 – Location Preferences.

A. Preferred Locations. The following is the order of preference for the location and installation of Telecom Facilities, from highest priority location and technique to lowest. Antenna Classes are the Telecom Facilities and their attendant accessory/Support Equipment separated into the following distinct Antenna Classes based on observed aesthetic impacts, as follows:

Class 1 (Camouflaged/Screened): A Telecom Facility with Antennas mounted on an existing or proposed non-residential building or other structure not primarily intended to be an antenna support structure. The Antennas, Base Station, and Support Equipment are fully screened so that they are not visible to the general public. Typical examples include:

- Wall or roof mounted Antennas that are screened behind radio-frequency transparent, visually-opaque screen walls that match or complement existing exterior surfaces of the building or structure to which they are attached.
- Antennas designed to be incorporated within an architectural feature of a building or structure such as a steeple, cross, cupola, sign, monument, clock tower or other architectural element.
- Base Station equipment that is contained within an existing structure, or placed into a new attached structure that matches or complements the existing exterior surfaces of the building or structure

Class 2 (Collocation): A Telecom Facility with Antennas and/or Base Stations co-located on an approved existing Telecom Facility and mounted in the same manner with materially the same or improved screening, or the same camouflage design techniques as the approved or existing Telecom Facility. Class 2 Collocation Telecom Facilities also may incorporate flush-to-grade underground Base Station enclosures including flush-to-grade vents, or vents that extend no more than 24 inches above the finished grade and are screened from public view.

Class 3 (Visible): A Telecom Facility with Antennas mounted on an existing non-residential building, structure, pole, light standard, Utility Tower, and/or Lattice Tower. The structure is treated with some camouflage design techniques, but the Antenna panels and some portions of the pole, light standards, Utility Tower, or Lattice Tower are still visible. Typical examples include:

- Antennas mounted on the exterior of an existing building so that the panels are visible, but painted to match the color and texture of the building or structure.
- Antennas flush-mounted atop an existing pole or light standard that are unscreened or un-camouflaged, or attached to an existing pole or light standard utilizing a cylindrical Antenna unit that replicates the diameter and color of the pole or standards.
- Antenna panels installed on existing electrical or other Utility Towers, or existing Lattice Towers.

CalWA Comment No. 7: This additional requirement is not warranted nor relevant to a Collocation. Please remove.

CalWA Comment No. 8: WTF mounted on existing utility infrastructure should be encourage and promoted via Class 1 designation.

CalWA Comment No. 9: This type of facility should be Class 1. Please reclassify as a facility that is within a rock or shrub type facility is very low profile and minimally visible, if at all.

Class 4 (Freestanding Structure): A Facility with Antennas mounted on a new freestanding structure constructed for the sole or primary purpose of supporting the Telecom Facility. The Telecom Facility is designed to replicate a natural feature or is a Monopole or Lattice Tower. The Antennas are either unscreened and visible, or camouflaged/ designed to blend in with their surroundings. Typical examples include:

- Antennas mounted inside or behind elements that replicate natural features such as rocks and shrubbery and located in hillsides or other natural areas where the Telecom Facility blends into the surrounding vegetation or topography (e.g. false rocks or shrubbery).
- A Telecom Facility consisting of Antennas mounted on or inside a freestanding structure that uses camouflage to disguise the Antennas (e.g. monotree, flagpole, or other freestanding structure).
- A Telecom Facility consisting of Antennas on the exterior of a freestanding structure that is unscreened/un-camouflaged (e.g. Monopoles or Lattice Tower).

Class 5 (Temporary): A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility on a site until a permanent (separately approved) Telecom Facility to provide coverage for the same general area is operational but such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040. A Wireless Tower, Antennas and/or Base Station, and associated Support Equipment system that is a temporary Telecom Facility located on a site in connection with a special event, as that term may be defined in Municipal Code Section 11.03.020 (General Provisions), may be allowed only upon approval of a Special Events Permit, as regulated by Chapter 11.03. Class 5 installations include but are not limited to equipment mounted on trailers, trucks, skids, or similar portable platforms.

B. Prohibited Locations. Telecom Facilities are prohibited in the following locations:

1. On properties zoned for single-unit or two-unit residential development, including equivalent PC District designation.
2. On properties zoned for multi-unit residential development and mixed-use development consisting of four (4) dwelling units or less.
3. In the Open Space (OS) zoning district, unless Telecom Facilities are collocated on an existing Utility Tower within a utility easement area, or collocated on an existing Telecom Facility.

C. Installations in the Public Right-of-Way. All Telecom Facilities proposed to be located in the public right-of way shall comply with the provisions of Title 13, and notwithstanding any provisions contained in Title 13 to the contrary, shall be subject to the following:

1. All Support Equipment shall be placed below grade in the public right-of-way where the existing utility services (e.g., telephone, power, cable TV) are located underground. Exception: Any pedestal meter required for the purpose of providing electrical service power for the proposed Telecom Facility may be allowed to be installed above ground in a public right-of-way.
2. Whenever Feasible, new Antennas proposed to be installed in public right-of-way shall be placed on existing or replacement utility structures, light standards, or other existing vertical structures.
3. Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.

D. Collocation Installations.

1. When Required. To limit the adverse visual effects of and proliferation of individual Telecom Facilities in the City, a new Telecom Facility proposed within one thousand (1,000) feet of an existing Telecom Facility shall be required to collocate on the same building or structure as the existing Telecom Facility. Exception: If the reviewing authority determines, based on compelling evidence submitted by the applicant, that Collocation of one or more new Telecom Facilities within one thousand (1000) feet of an existing Telecom Facility is not Feasible, and all findings required to grant approval of a MUP, CUP or LTP for a Telecom Facility can be met, then such Collocation shall not be required.
2. Condition Requiring Future Collocation. In approving a Telecom Facility, the review authority may impose a condition of approval providing for future Collocation of Telecom Facilities by other carriers at the same site.

20.49.060 – General Development and Design Standards.

A. General Criteria. All Telecom Facilities shall employ design techniques to minimize visual impacts and provide appropriate screening to result in the least intrusive means of providing the service. Such techniques shall be employed to make the installation, appearance and operations of the Telecom Facility as visually inconspicuous as possible. To the greatest extent Feasible, Telecom Facilities shall be designed to minimize the visual impact of the Telecom Facility by means of location, placement, height, screening, landscaping, and camouflage, and shall be compatible with existing architectural elements, building materials, other building characteristics, and the surrounding area. Where an existing structure is replaced to allow for the addition of a Telecom Facility, the replacement structure shall retain as its primary use and purpose that of the prior-existing structure. For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.

In addition to the other design standards of this Section, the following criteria shall be considered by the review authority in connection with its processing of any MUP, CUP or LTP for a Telecom Facility:

1. Blending. The extent to which the proposed Telecom Facility blends into the surrounding environment or is architecturally compatible and integrated into the structure.
2. Screening. The extent to which the proposed Telecom Facility is concealed, screened or camouflaged by existing or proposed new topography, vegetation, buildings or other structures.
3. Size. The total size of the proposed Telecom Facility, particularly in relation to surrounding and supporting structures.
4. Location. Proposed Telecom Facilities shall be located so as to utilize existing natural or man-made features in the vicinity of the Telecom Facility, including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening and blending with the predominant visual backdrop.

B. Public View Protection. Telecom Facilities involving a site adjacent to an identified public view point or corridor, as identified in General Plan Policy NR 20.3 (Public Views), shall be reviewed to evaluate the potential impact to public views consistent with Section 20.30.100 (Public View Protection).

C. Height. All Telecom Facilities shall comply with Antenna height restrictions, if any, required by the Federal Aviation Administration, and shall comply with Section 20.30.060.E. (Airport Environs Land Use Plan (AELUP) for John Wayne Airport and Airport Land Use Commission (ALUC) Review Requirements) as may be in force at the time the Telecom Facility is permitted or modified.

1. Maximum Height. Antennas shall be installed at the minimum height possible to provide average service to the Telecom Operator's proposed service area. In any case, no Antenna or other telecom equipment or screening structure shall extend higher than the following maximum height limits:

- a. Telecom Facilities installed on existing streetlight standards, traffic control standards, Utility Poles, Utility Towers or other similar structures within the public right-of-way shall not exceed 35 feet in height above the finished grade.
- b. Telecom Facilities may be installed on existing Utility Poles or Utility Towers that exceed 35 feet above the finished grade where the purposes of the existing Utility Pole or Utility Tower is to carry electricity or provide other wireless data transmission provided that the top of the Antenna does not extend above the top of the Utility Pole or Utility Tower.

c. Telecom Facilities installed in ground-mounted flagpoles may be installed at a maximum height of 35 feet in nonresidential districts only, and shall not exceed 24 inches in width at the base of the flagpole and also shall not exceed 20 inches in width at the top of the flagpole. As a condition of approval, flagpole sites shall comply with 4 U.S.C. § 1 *et seq.* (the "U.S. Flag Code").

- d. Telecom Facilities may be installed on buildings or other structures to extend up to 5 feet above the base height limit established in Part 2 (Zoning Districts, Allowable Uses, and Zoning District Standards) for the zoning district in which the Telecom Facility is located.
- e. Applications for the installation of Telecom Facilities proposed to be greater than 5 feet above the base height limit may be installed up to the maximum height limit for the zoning district in which the Telecom Facility is located in accordance with Section 20.30.060.C.2 (Height Limit Areas), subject to review and action by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP for a Telecom Facility to exceed the base height limit by more than 5 feet after making all of the required findings in Section 20.49.070.H (Permit Review Procedures).

2. Over-Height Buildings or Structures. Stealth Telecom Facilities may be installed within or on structures that are permitted to exceed the height limit for the zoning district in which the structure is located, either by right under Title 20 or which have received a discretionary approval, so long as the height of the structure is not being increased. The standard of review shall be based on the type of installation and Antenna Classes being used.

D. Setbacks. Proposed Telecom Facilities shall comply with the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located. Setbacks shall be measured from the part of the Telecom Facility closest to the applicable lot line or structure. For ground-mounted Wireless Towers installed on public property or private property, unless the review authority determines a smaller setback would be appropriate based on the surrounding development or uses, the setback

CalWA Comment No. 14: These types of facilities should be permitted in residential districts that are developed non-residential land uses.

CalWA Comment No. 15: Additional heights should be permitted up to 10 feet above the base height as additional height could result in lesser overall facilities and will allow for additional collocations further reducing the number of overall facilities needed in the future.

CalWA Comment No. 17: This land use is by definition a "utility". As critical "utility infrastructure" some tolerance of "aesthetics" associated with utility infrastructure needs to be considered and afforded this land use as it is afforded other "utilities". Over emphasis of "aesthetics".

CalWA Comment No. 16: This is unnecessary and could exclude many good opportunities for appropriate locations. This requirement should be removed.

shall be the greater of: a) the required setback established by the development standards for the zoning district in which the Telecom Facility is proposed to be located; or b) 110% of the maximum height of the Wireless Tower including any Antenna or Antenna enclosures attached thereto.

E. Design Techniques. Design techniques shall result in the installation of a Telecom Facility that is in scale with the surrounding area, hides the installation from predominant views from surrounding properties, and prevents the Telecom Facility from visually dominating the surrounding area. Design techniques may include the following:

1. Screening elements to camouflage, disguise, or otherwise hide the Telecom Facility from view from surrounding uses.
2. Painting and/or coloring the Telecom Facility to blend into the predominant visual backdrop.
3. Siting the Telecom Facility to utilize existing features (buildings, topography, vegetation, etc.) to screen, camouflage, or hide the Telecom Facility.
4. Utilizing simulated natural features (trees, rocks, etc.) to screen, camouflage, or hide the Telecom Facility.
5. Providing Telecom Facilities of a size that, as determined by the City, is not visually obtrusive such that any effort to screen the Telecom Facility would create greater visual impacts than the Telecom Facility itself.

F. Screening Standards. Following is a non-exclusive list of potential design and screening techniques that should be considered based on the following Antenna Classes:

1. For Class 1 (Camouflaged/Screened) Antenna Installations:
 - a. All Telecom Facility components, including all Antenna panels and Support Equipment, shall be fully screened, and mounted either inside the building or structure, or behind the proposed screening elements and not on the exterior face of the building or structure.
 - b. Screening materials shall match in color, size, proportion, style, and quality with the exterior design and architectural character of the structure and the surrounding visual environment. If determined necessary by the reviewing authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
 - c. In conditions where the Antennas and Support Equipment are installed within a new freestanding structure, (an architectural feature such as a steeple, religious symbol or tower, cupola, clock tower, sign, etc.), the installation shall blend in the predominant visual backdrop so it appears to be a decorative and attractive architectural feature.
2. For Class 2 (Collocation) Antenna Installations:
 - a. A Collocation installation shall use screening methods materially similar to those used on the existing Telecom Facility and shall not diminish the screening of the existing Telecom Facility.
 - b. If determined necessary by the review authority, use of other improved and appropriate screening methods may be required to screen the Antennas, Base Station, and Support Equipment from public view.
3. For Class 3 (Visible) Antenna Installations:
 - a. Building or structure mounted Antennas shall be painted or otherwise coated to match or complement the predominant color of the structure on which they are mounted and shall be compatible with the architectural texture and materials of the building to which the

CalWA Comment No. 17: How is this section anticipated to be applied? Wholesale change out of the WTF would not be acceptable. Please clarify.

CalWA Comment No. 18A: The requirement for locating associated radio transmission/amplification equipment inside the streetlight pole or traffic control standard "without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole" is onerous and cost prohibitive. It is also unequitable treatment when compared to other utility infrastructure within the ROW. We request an option for above ground equipment be available.

Antennas are mounted. No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.

- b. All Antenna components and Support Equipment shall be treated with exterior coatings of a color and texture to match the predominant visual background and/or adjacent architecture so as to visually blend in with the surrounding development. Subdued colors and non-reflective materials that blend with surrounding materials and colors shall be used.

- c. Antenna installations in the public right-of-way and/or on an existing or replacement streetlight pole or traffic control standard shall be limited to Antennas, Supporting Equipment, and cable components that are compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted. All transmission or amplification equipment such as remote radio units, tower mounted amplifiers and surge suppressors shall be mounted inside the streetlight pole or traffic control standard without increasing the pole width or shall be mounted in a flush-to-grade enclosure adjacent to the base of the pole.

- d. Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible, and treated with exterior coatings of a color and texture to match the existing pole. If Antennas are proposed to be installed without screening, they shall be flush-mounted to the pole and shall be treated with exterior coatings of a color and texture to match the existing pole.

- e. Antennas shall be mounted on existing poles wherever Feasible. If a new pole is proposed to replace the existing pole, the replacement pole shall be consistent with the size, shape, style and design of the existing pole, including any attached light arms.

4. For Class 4 (Freestanding Structure) Antenna Installations:

- a. For a false rock, the proposed screen structure shall match in scale and color other rock outcroppings in the general vicinity of the proposed site. A false rock screen may not be considered appropriate in areas that do not have natural rock outcroppings.

- b. The installation of a false tree (such as but without limitation a monopine or monopalm, or false shrubbery) shall be designed for and located in a setting that is compatible with the proposed screening method. Such installations shall be situated so as to utilize existing natural or manmade features including topography, vegetation, buildings, or other structures to provide the greatest amount of visual screening. For false trees or shrubbery installations, all Antennas and Antenna supports shall be contained within the canopy of the tree design, and other vegetation comparable to that replicated in the proposed screen structure shall be prevalent in the immediate vicinity of the antenna site, and the addition of new comparable living vegetation may be necessary to enhance the false tree or shrubbery screen structure.

- c. The installation of a new Monopole or Lattice Tower is prohibited unless the applicant by use of compelling evidence can show to the satisfaction of the review authority that higher priority locations or Stealth Facilities are either not available or are not Feasible.

5. For Class 5 (Temporary) Antenna Installations:

- a. A temporary Telecom Facility installation may require screening to reduce visual impacts depending on the duration of the permit and the setting of the proposed site. If screening methods are determined to be necessary by the review authority, the appropriate screening methods will be determined through the permitting process reflecting the temporary nature of the Telecom Facility.

CalWA Comment No. 18: If this additional screening is done this type of facility should be Class 1.

CalWA Comment No. 19: This should be a Class 1 type facility.

CalWA Comment No. 20: In industrial/manufacturing zones this design option is appropriate and helps reduce costs of facilities for all. Also in proximity to transmission lattice towers similar lattice tower designs are most appropriate.

CalWA Comment No. 21: Need clarification on this Class?

6. **Support Equipment.** All Support Equipment associated with the operation of any Telecom Facility including but not limited to the Base Station shall be placed or mounted in the least visually obtrusive location possible, and shall be screened from view. The following is a non-exclusive list of potential screening techniques that may be utilized based on the type of installation:

- a. **Building-Mounted Facilities.** For building or structure-mounted Antenna installations, Support Equipment for the Telecom Facility may be located inside the building, in an underground vault, or on the roof of the building that the Telecom Facility is located on, provided that both the equipment and screening materials are painted the color of the building, roof, and/or surroundings. All screening materials for roof-mounted Telecom Facilities shall be of a quality and design compatible with the architecture, color, texture and materials of the building to which it is mounted. If determined necessary by the review authority, screening to avoid adverse impacts to views from land or buildings at higher elevations shall be required.
- b. **Freestanding Facilities.** For freestanding Telecom Facilities installations, not mounted on a building or structure, Support Equipment for the Telecom Facility:

- Shall be visually screened by locating the Support Equipment in a fully enclosed building or in an underground vault, or
- Shall be screened in a security enclosure consisting of walls and/or landscaping to effectively screen the Support Equipment at the time of installation. All wall and landscaping materials shall be selected so that the resulting screening will be visually integrated with the architecture and landscape architecture of the surroundings.
- Screening enclosures may utilize graffiti-resistant and climb-resistant vinyl-clad chain link with a “closed-mesh” design (i.e. one-inch gaps) or may consist of an alternate enclosure design approved by the review authority. In general, the screening enclosure shall be made of non-reflective material and painted or camouflaged to blend with surrounding materials and colors.

- c. **Installations in a Public Right-of-Way.** Support Equipment approved to be located above ground in a public right-of-way shall be painted or otherwise coated to be visually compatible with the existing or replacement pole, lighting and/or traffic signal equipment without substantially increasing the width of the structure.

- G. Night Lighting.** Telecom Facilities shall not be lighted except for security lighting at the lowest intensity necessary for that purpose or as may be required by the U.S. Flag Code. Such lighting shall be shielded so that direct illumination does not directly shine on nearby properties. The review authority shall consult with the Police Department regarding proposed security lighting for Telecom Facilities on a case-by-case basis.
- H. Signs and Advertising.** No advertising signage or identifying logos shall be displayed on any Telecom Facility except for small identification, address, warning, and similar information plates. Such information plates shall be identified in the telecom application and shall be subject to approval by the review authority. Signage required by state or federal regulations shall be allowed in its smallest permissible size.

CalWA Comment No. 22: This is not a feasible option. Should be removed.

CalWA Comment No. 23: It is not feasible to provide above ground support equipment within the pole without some reasonable increase in width being permitted. This section should be redrafted.

- I. Nonconformities.** A proposed Telecom Facility shall not create any new or increased nonconformities as defined in the Zoning Code, such as, but not limited to, a reduction in and/or elimination of, required parking, landscaping, or loading zones.
- J. Maintenance.** The Telecom Operator shall be responsible for maintenance of the Telecom Facility in a manner consistent with the original approval of the Telecom Facility, including but not limited to the following:

CalWA Comment No. 25: For those facilities that are not visible and not within a residential zone nor within 150' of a residential zone a ministerial permit option to incentivize and reduce processing costs and time should be an option.

1. Any missing, discolored, or damaged camouflage or screening shall be restored to its original permitted condition.
2. All graffiti on any components of the Telecom Facility shall be removed promptly in accordance the Newport Beach Municipal Code.
3. All landscaping required for the Telecom Facility shall be maintained in a healthy condition at all times, and shall be promptly replaced if dead or dying.
4. All Telecom Facilities shall be kept clean and free of litter.
5. All equipment cabinets shall display a legible contact number for reporting maintenance problems to the Facility Operator.
6. If a flagpole is used for a Telecom Facility, flags shall be flown and shall be properly maintained at all times. The use of the United States flag shall comply with the provisions of the U.S. Flag Code.

CalWA Comment No. 24: More incentivized zoning principles should be incorporated into the "Permit Review Procedures".

20.49.070 – Permit Review Procedures.

The procedures and requirements for preparation, filing, and processing of a permit application for a Telecom Facility shall be as specified in Chapter 20.50 (Permit Application Filing and Processing) unless otherwise noted below.

A. Permit Required. All applicants for Telecom Facilities shall apply for a MUP, CUP or LTP, from the Community Development Department, depending on the Antenna Class, height, and duration, as specified in the table below:

**Table 4-1
Permit Requirements for Telecom Facilities**

Antenna Class	Location of Proposed Telecom Facility		
	Located in a Nonresidential District more than 150 feet from a Residential (or Equivalent PC) District or Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Open Space District or Public Park or Public Facility zoned PR or PF	Located inside or within 150 feet of any Residential District or Equivalent PC District
Class 1 Antenna (a) (Camouflaged/Screened)	MUP	MUP	MUP
Class 2 Antenna (a) (b) (Collocation)	MUP	MUP	CUP
Class 3 Antenna (a) (Visible)	MUP	MUP	CUP

CalWA Comment No. 25: For Nonresidential there should be a lesser ministerial process to further incentivize the nonresidential locations.

CalWA Comment No. 26: No Collocation should require a CUP.

CalWA Comment No. 27: Should be allowed via MUP if within height limits of underlying zone and "stealthed".

CalWA Comment No. 28: For WTF located in Residential Zones with non-residential land uses, a MUP or ministerial permit should be afforded if completely screened.

CalWA Comment No. 29: Is this for emergency facilities? Not clear.

Antenna Class	Location of Proposed Telecom Facility		
Class 4 Antenna (a) (c) (Freestanding Structure)	MUP	CUP	CUP
Class 5 Antenna (a) (c) (d) (Temporary)	LTP	LTP	LTP

CalWA Comment No. 30: Has the City conducted Environmental Reviews on wireless facilities as a matter of routine or are most facilities determined to be "Exempt" from the provisions of CEQA (Categorically).

(a) Any application for a Telecom Facility that proposes to exceed the base height limit of the applicable zoning district in which the Telecom Facility is located by greater than five (5) feet shall require review and action of a CUP by the Planning Commission. Pursuant to this provision, an application that would otherwise be subject to review by the Zoning Administrator would become subject to review by the Planning Commission. The Planning Commission may approve or conditionally approve a CUP, subject to the required findings in Subparagraph H, below.

(b) The review procedure for Collocated Telecom Facilities shall be consistent with the applicable review procedure as identified elsewhere in this table depending on the type of installation and Antenna Class being proposed for the Collocation, unless the Collocated Telecom Facility meets the requirements of California Government Code § 65850.6, or involves the Collocation of new transmission equipment and is consistent with the provisions in Section 20.49.100 (Modification of Existing Telecom Facilities).

(c) Antennas mounted on or within flagpoles, and temporary Telecom Facilities shall not be permitted on properties either used or zoned residentially.

(d) Temporary Telecom Facilities shall be subject to the standard of review for an LTP, pursuant to Section 20.52.040 (Limited Term Permits).

CalWA Comment No. 31: What is the purpose of this limitation? This B. excludes numerous appropriate land use locations that are zoned residential but may have other land uses, ie. churches which provide excellent locations in proximity to residential uses where these facilities are extremely necessary.

B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties. Prior to the submittal for any application for any Telecom Facility located on any City-owned property or City-held trust property, the applicant shall first obtain written authorization from the City Manager or its designee to submit an application.

C. Fee. All costs associated with the permit application review shall be the responsibility of the applicant, including any expense incurred for any outside technical or legal services in connection with the application.

D. Review Process. Review of applications for all Telecom Facilities in City shall be consistent with Chapter 20.50 (Permit Application Filing and Processing), and the FCC Declaratory Ruling FCC 09-99 ("Shot Clock") deadlines.

E. Review of Collocated Facilities. Notwithstanding any provision of this Chapter to the contrary, pursuant to California Government Code section 65850.6 (as amended or superseded), the addition of a new Telecom Facility to an existing Telecom Facility resulting in the establishment of a Collocated Telecom Facility shall be a permitted use not requiring a discretionary permit provided the underlying Telecom Facility was granted a discretionary permit and was subject to either an environmental impact report, mitigated negative declaration or negative declaration. If such a Collocated Telecom Facility does not satisfy all of the requirements of Government Code section 65850.6, it shall be reviewed pursuant the review procedures contained in Section 20.49.070 (Permit Review Procedures).

F. Emergency Communications Review. At the time an application is submitted to the Community Development Department, a copy of the Plans, Map, and Emission Standards shall be sent to the Chief of the Newport Beach Police Department. The Police Department or its designee shall review the plan's potential conflict with emergency communications.

CalWA Comment No. 32: Has it been the practice to conduct Environmental Reviews pursuant to CEQA for facilities in Newport Beach? If so then would this State Code section be invoked?

CalWA Comment No. 33: This requirement is inconsistent with State and Federal Collocation laws. Some recognition of the Class 1 type facility and collocations should be included herein. Also further incentivization of process would be the ministerial permit for Class 1 and collocations that are consistent with State Code section, 65850.6.

The review may include a pre-installation test of the Telecom Facility to determine if any interference exists. If the Police Department determines that the proposal has a high probability that the Telecom Facility will interfere with emergency communications devices, the applicant shall work with the Police Department to avoid interference. .

G. Public Notice and Public Hearing Requirements. An application for a Telecom Facility shall require a public notice, and a public hearing shall be conducted, in compliance with Chapter 20.62 (Public Hearings).

H. Required Findings for Telecom Facilities. The following findings shall apply to all Telecom Facilities:

1. General. The review authority indicated in Table 4-1 may approve or conditionally approve an application for a Telecom Facility only after first finding each of the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits), and each of the following:

- a. The proposed Telecom Facility is visually compatible with the surrounding neighborhood.
- b. The proposed Telecom Facility complies with the technology, height, location and design standards, as provided for in this Chapter.
- c. An alternative site(s) located further from a Residential District, Public Park or Public Facility cannot feasibly fulfill the coverage needs fulfilled by the installation at the proposed site.
- d. An alternative Antenna construction plan that would result in a higher priority Antenna Class category for the proposed Telecom Facility is not available or reasonably Feasible and desirable under the circumstances.

2. Findings to Increase Height. The review authority may approve, or conditionally approve an application for a Telecom Facility which includes a request to exceed the base height limit for the zoning district in which the Telecom Facility is located by more than 5 feet only after making each of the following findings in addition to the required findings above, as well the required findings for a MUP or CUP pursuant to Section 20.52.020 (Conditional Use Permits and Minor Use Permits), or an LTP pursuant to Section 20.52.040 (Limited Term Permits):

- a. The increased height will not result in undesirable or abrupt scale changes or relationships being created between the proposed Telecom Facility and existing adjacent developments or public spaces.
- b. Establishment of the Telecom Facility at the requested height is necessary to provide service.

20.49.080 – Permit Implementation, Time Limits, Extensions, and Appeals.

- A. The process for implementation or “exercising” of permits issued for a Telecom Facility, time limits, and extensions, shall be in accordance with Chapter 20.54 (Permit Implementation, Time Limits, and Extensions).
- B. Appeals. Any appeal of the decision of the review authority of an application for a Telecom Facility shall be processed in compliance with Chapter 20.64 (Appeals).

CalWA Comment No. 34: These criteria are extremely subjective and do not consider the technical requirements of the land use. These criteria are unbalanced with overemphasis on "aesthetics".

CalWA Comment No. 35: Additional height should be permitted as required. An additional 5' only is too onerous and will result in many more facilities being required

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property.

When applying for a permit pursuant to this Chapter, all Telecom Facilities located on City-owned or City-held trust property shall require a license agreement approved as to form by the City Attorney, and as to substance (including, but not limited to, compensation, term, insurance requirements, bonding requirements, and hold harmless provisions) by the City Manager, consistent with provisions in the City Council Policy Manual.

Prior to entering into an agreement, the applicant shall obtain a MUP, CUP or LTP. Upon the issuance of a MUP, CUP or LTP, as required, and upon entering into an agreement, the applicant shall obtain any and all other necessary permits, including, encroachment permits for work to be completed in the public right-of-way, building permits, etc. All costs of said permits shall be at the sole and complete responsibility of the applicant. All work shall be performed in accordance with the applicable City standards and requirements.

20.49.100 – Modification of Existing Telecom Facilities.

Notwithstanding any provision in this Chapter of the Zoning Code, a request for a modification of an existing Wireless Tower or Base Station that involves:

- a. The Collocation of new transmission equipment;
- b. The removal of existing transmission equipment; or
- c. The replacement of existing transmission equipment

CalWA Comment No. 37: What is an example of a "Telecom Facility that does not qualify as a Wireless Tower or Base Station". Needs clarification.

shall be subject to a ministerial review and approval without the processing of a discretionary permit provided that such modification does not substantially change any of the physical dimensions of such Wireless Tower or Base Station from the dimensions approved as part of the original discretionary permit for the Wireless Tower or Base Station.

However, any modification to a Wireless Tower or Base Station which substantially changes the physical dimensions of either the Wireless Tower or Base Station, and any other modification to a Telecom Facility that does not qualify as a Wireless Tower or Base Station, shall be subject to the permits and authorizations required by this Chapter.

"Substantially Change the Physical Dimensions" means any of the following, and refers to a single change, or a series of changes over time (whether made by the same or different entities) viewed against the City approval(s) for the Wireless Tower or Base Station as existing on February 22, 2012, that individually or cumulatively have any of the effects described below:

- a. Changing any physical dimension of the Wireless Tower or Base Station in a manner that creates a violation of any safety code adopted by the City, or by the state or federal government.
- b. Changing the physical dimension of a Stealth Facility on a Wireless Tower, where the changes would be inconsistent with the design of the Stealth Facility, or make the Wireless Tower more visible.
- c. Changing the physical dimension would require work that would intrude upon the public right-of-way, or any environmentally sensitive area.
- d. Increasing or decreasing by five percent (5%) or more any of the following:

CalWA Comment No. 38: Nearly any additional facilities incorporated onto an existing facility could be interpreted to "make the Wireless Tower more visible". This needs to be clarified and relaxed to accommodate collocations without being determined to crossing this "threshold".

CaWA Comment No. 39: This threshold is vague and unclear. Delete or clarify.

CalWA Comment No. 40: This should be increased to 10%.

- The height, width, or depth in any direction of any portion of the Wireless Tower or Base Station; or
- The area required for structures required to support the Wireless Tower, including but not limited to guy wires as approved and constructed through the discretionary permit process

Provided that in no event shall the height is increased to exceed the maximum height permitted in the applicable zoning district under the City's regulations.

- e. Increasing by more than five percent (5%) any of the height, width, depth or area encompassed within any structure or object enclosing the Wireless Tower, such as a fence or line of shrubs or bushes.
- f. Increasing any of an existing Antenna Array's depth, circumference, or horizontal radius from the Wireless Tower in any direction by more than five percent (5%).
- g. Adding more than two Antenna Arrays to an existing Wireless Tower, or adding Antenna Arrays that, if the Antenna Array were an existing Antenna Array, would be of such depth, circumference or radius as to fall outside of item f (above), unless such Antenna Arrays were approved pursuant to Government Code Section 65850.6.
- h. The mounting of the new or replacement transmission equipment would involve installing new equipment cabinet(s) not permitted under the initial approval and that will not fit within the existing enclosure for the Wireless Tower or Base Station, or would require installation of a new cabinet or enclosure, excluding new equipment and cabinets that will be installed underground. (Note: the proposed installation of a power back-up system [i.e., gas/diesel generator, fuel cell, battery system, etc.] is not Collocation of new transmission equipment.)
- i. Any increase in any physical dimension of a Wireless Tower or Base Station or any equipment related thereto or any enclosure thereof at a Legal Nonconforming Facility.

Each application submitted under this section for a modification to an existing Wireless Tower or Base Station shall be accompanied by:

1. A detailed description of the proposed modifications to the existing Telecom Facility(ies);
2. A photograph or description of the Wireless Tower as originally constructed, if available; a current photograph of the existing Wireless Tower and/or Base Station; and, a graphic depiction of the Wireless Tower and/or Base Station after modification showing all relevant dimensions;
3. A detailed description of all construction that will be performed in connection with the proposed modification; and
4. A written statement signed and stamped by a professional engineer, licensed and qualified in California, attesting that the proposed modifications to be performed will not trigger discretionary review under this section.

Any permit issued will be conditioned, and may be revoked, and the Telecom Facility required to be removed or restored to its pre-modification condition if:

- a. Any material statement made with respect to the Telecom Facility is false; or
- b. The modifications as actually made would have triggered a discretionary review.

20.49.110 – Operational and Radio Frequency Compliance and Emissions Report.

At all times, the operator shall ensure that its Telecom Facilities shall comply with the most current regulatory, operations standards, and radio frequency emissions standards adopted by

the FCC. The operator shall be responsible for obtaining and maintaining the most current information from the FCC regarding allowable radio frequency emissions and all other applicable regulations and standards. Said information shall be made available by the operator upon request at the discretion of the Community Development Director.

Within thirty (30) days after installation of a Telecom Facility, a radio frequency (RF) compliance and emissions report prepared by a qualified RF engineer acceptable to the City shall be submitted in order to demonstrate that the Telecom Facility is operating at the approved frequency and complies with FCC standards for radio frequency emissions safety as defined in 47 C.F.R. § 1.1307 *et seq.* Such report shall be based on actual field transmission measurements of the Telecom Facility operating at its maximum effective radiated power level, rather than on estimations or computer projections. If the report shows that the Telecom Facility does not comply with the FCC's 'General Population/Uncontrolled Exposure' standard as defined in 47 C.F.R. § 1.1310 Note 2 to Table 1, the Director shall require that use of the Telecom Facility be suspended until a new report has been submitted confirming such compliance.

Upon any proposed increase of at least ten percent (10%) in the effective radiated power or any proposed change in frequency use of the Telecom Facility by the Telecom Operator, the Telecom Operator shall be required to provide an updated certified radio frequency (RF) compliance and RF emissions safety report.

A qualified independent radio frequency engineer, selected and under contract to the City, may be retained to review said certifications for compliance with FCC regulations. All costs associated with the City's review of these certifications shall be the responsibility of the permittee, which shall promptly reimburse City for the cost of the review.

20.49.120 – Right to Review or Revoke Permit.

The reservation of right to review any permit for a Telecom Facility granted by the City is in addition to, and not in lieu of, the right of the City to review and revoke or modify any permit granted or approved hereunder for any violations of the conditions imposed on such permit.

20.49.130 – Removal of Telecom Facilities.

A. Discontinued Use. Any Telecom Operator who intends to abandon or discontinue use of a Telecom Facility must notify the Community Development Director by certified mail no less than thirty (30) days prior to such abandonment or discontinuance of use. The Telecom Operator or owner of the affected real property shall have ninety (90) days from the date of abandonment or discontinuance, or a reasonable additional time as may be approved by the Community Development Director, within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator and the Telecom Operator immediately commences use within a reasonable period of time as determined by the Community Development Director;
3. Remove the Telecom Facility and restore the site.

B. Abandonment. Any Telecom Facility that is not operated for transmission and/or reception for a continuous period of ninety (90) days or whose Telecom Operator did not remove the Telecom Facility in accordance with Subsection A shall be deemed abandoned. Upon a

finding of abandonment, the City shall provide notice to the Telecom Operator last known to use such Facility and, if applicable, the owner of the affected real property, providing thirty days from the date of the notice within which to complete one of the following actions:

1. Reactivate use of the Telecom Facility;
2. Transfer the rights to use the Telecom Facility to another Telecom Operator who has agreed to reactivate the Telecom Facility within 30 days of the transfer;
3. Remove the Telecom Facility and restore the site.

C. Removal by City.

1. The City may remove an abandoned Telecom Facility, repair any and all damage to the premises caused by such removal, and otherwise restore the premises as is appropriate to be in compliance with applicable codes at any time after thirty (30) days following the notice of abandonment.
2. If the City removes the Telecom Facility, the City may, but shall not be required to, store the removed Telecom Facility or any part thereof. The owner of the premises upon which the abandoned Telecom Facility was located and all prior operators of the Telecom Facility shall be jointly liable for the entire cost of such removal, repair, restoration and storage, and shall remit payment to the City promptly after demand therefore is made. In addition, the City Council, at its option, may utilize any financial security required in conjunction with granting the telecom permit as reimbursement for such costs. Also, in lieu of storing the removed Telecom Facility, the City may convert it to the City's use, sell it, or dispose of it in any manner deemed by the City to be appropriate.

D. City Lien on Property. Until the cost of removal, repair, restoration and storage is paid in full, a lien shall be placed on the abandoned personal property and any real property on which the Telecom Facility was located for the full amount of the cost of removal, repair, restoration and storage. The City Clerk shall cause the lien to be recorded with the Orange County Recorder, with the costs of filing, processing, and release of such City Lien being added to the other costs listed in this Section D.

Newport Beach Wireless Ordinance (July 19, 2012 Version)

The following comments are on the version of the Wireless Telecommunications Facilities Ordinance (PA2012-057) / Code Amendment No. 2012-004 presented to the Newport Beach Planning Commission as Agenda Item 5 at its July 19, 2012 meeting.

The comments were prepared by Jim Mosher (jimmosher@yahoo.com), 2210 Private Road, Newport Beach 92660 (949-548-6229) , and are a mix of what may seem major and minor points.

Disclosure

I live in a blufftop home on a “quiet” street overlooking Irvine Avenue, just north of Santiago Road. I enjoy a view across the Upper Newport Bay Nature Reserve to Saddleback Peak in the distance. The only unnatural object impairing my view is the top of a City-owned streetlight pole in the public right-of-way along Irvine Avenue. In March 2007 the City Planning Department (now Division) approved, without public notice, hearing or right of appeal, an application to attach a pair of highly visible commercial cell antennas to the top of that pole. In November, 2008, without an clear authority from the City Council, the City Manager signed a long-term lease for use of the City-owned pole, and in January, 2009 impacted residents were notified of imminent construction by a contractor (which, to date, has not yet happened). Adding insult to injury, this has been designated as a preferred site for future collocation.

As it turns out the application was approved based on fraudulent information submitted by the applicant including maps which by failing to disclose a major wireless facility two blocks to the north created the appearance of a major “hole” in coverage where none existed. As it also turns out, under the existing telecom code the planner who approved the application should arguably have referred the matter to a noticed public hearing before the City Council because of the proposal’s greater-than-normal impact on private views. In addition, the letting of a lease by the City Manager, although consistent with the Council Policy, was, at least in my view, inconsistent with the City Charter, which permits *only* the City Council to bind the City (an action which to comply with the Brown Act would have to take place at a noticed public meeting). Finally, there is an ongoing disagreement as to whether the approval was granted in perpetuity (the Planning Division’s interpretation), or if as an unexercised building permit issued subject to the Uniform Building Code it expired (in the absence of any construction) 180 days after issuance (my interpretation).

My neighbors and I expect no relief from the proposed Wireless Telecommunications Facilities Ordinance since it says it does not affect the status of earlier approvals. Nonetheless this example seems to me a paradigm of at least one situation in which a good telecom code would preclude the issuance of a permit: cell equipment should not be sited where it impairs the enjoyment of public or private property unless there is compelling evidence of a serious gap in coverage that cannot be corrected in any less intrusive manner.

Although I appreciate staff’s effort in “updating” the code, to the extent the new code would permit the preceding facility to be approved I will find it wanting.

General Comments

The effort to update the City's wireless regulations and integrate them into the Zoning Code is very commendable, particularly to the extent it brings them under the umbrella of uniform hearing and appeal procedures applicable to other zoning/land use decisions.

That said, it seems unfortunate that the City's Media and Communications Committee no longer exists, for this is potentially a major revision that would have seemed deserving of more public outreach and input before reaching so finalized a state. Although I cannot guarantee they would have participated, I personally know of others who have not been entirely happy with the current process.

Where do the revised regulations belong?

The choice of numbering the commercial wireless regulations as "Chapter 20.49" appears to place them in Title 20 (Zoning Code) under Part 4 (Standards for Specific Land Uses). However that part currently contains only a single chapter (Chapter 20.48: Standards for Specific Land Uses), and "Wireless Telecommunications Facilities" would seem logically to be a section under that, much like Section 20.48.190 (Satellite Antennas and Amateur Radio Facilities). The primary reason for not doing so seems to be that the use of a combination of letters and numbers to designate the subsections within a section is more awkward than the decimal scheme of numbering sections within a chapter. Yet a standalone chapter looks out of place when all the other "Specific Land Uses" are sections within a single chapter.

Alternatively the commercial wireless regulations might belong as a separate chapter in Part 3 (Site Planning and Development Standards), much like Chapter 20.36 (Landscaping Standards) or Chapter 20.42 (Sign Standards). Since those chapters are arranged alphabetically, "Wireless Telecommunications Facilities" would be Chapter 20.47.

The proposed transplanting of the section of wireless-specific definitions from Title 15 to Title 20 as Section 20.49.030 (Definitions) is also awkward, for an effort was made to consolidate *all* the definitions in the new Zoning Code in a single section: Chapter 20.70 (Definitions). Although an exception has already been made in Chapter 20.42 (Sign Standards) – which has its own definition section – consideration should perhaps be given to including a dedicated section of wireless definitions in the "W" section of Chapter 20.70, rather than as a separate section within the Wireless code where they are disconnected from the other zoning definitions.

Specific Comments

20.49.010 – Purpose and Intent.

Minor comments:

- Since the regulations of the California Public Utilities Commission also come into play, the phrase in paragraph “**A. Purpose**” that says “*consistent with federal law*” should perhaps say “*consistent with **state and** federal law.*”
- The capitalization of words in the proposed ordinance is not entirely consistent with the style used in the remainder of the current Zoning Code, although the latter itself has many inconsistencies. “State” and “Federal” should perhaps be capitalized. Words like “Antenna” and “Collocation” should perhaps not be, since defined terms are not generally capitalized in most of the rest of the Zoning Code.

Major comment:

- Paragraph “**A. Purpose**” differs from the existing code by a single word, yet despite the claim in Attachment PC2 that there is “*No policy change*,” this is in fact a **major** policy change. The word “**public**” has been inserted into the phrase “**protecting scenic, ocean and coastal public views.**” Although staff has consistently claimed its presence was implied, it was **not** there, and the idea that its presence was implied is contradicted by existing Section 15.70.070 (Permit Review Procedures) where:
 1. under paragraph B.4 (Visual Simulations) it says “**Consideration shall be given to views from both public areas and private residences.**” and
 2. under paragraph F.3.b (Special Review by Council) a required finding for approval by the Council is that “**The approved facility will not result in conditions which are materially detrimental to nearby property owners, residents, and businesses, nor to public health or safety.**”
- In addition, Section 15.70.090 reserved to the City the modify or revoke the permit if changed circumstances resulted in “**Additional impairment of the views from surrounding properties.**”
- Likewise, the issuance of a permit for construction in the public right-of-way under NBMC 13.20.070 (Issuance of a PROW Permit) requires consideration of the adverse aesthetic effects of any above ground facilities.
- It is clear, then, that an objective of the existing telecom code is the minimization of impacts on private as well as public views – a commitment that is abandoned, to the detriment of the community, in the proposed revision.

20.49.020 – General Provisions.

Minor comment: in the old Section 15.70.020 the lettered sections were arranged alphabetically. It is unclear if the new arrangement has a better logic to it.

- **B. Permit and/or Agreement Required.**
 - This section seems redundant with Sections 20.49.070 and 20.49.090, to which it refers. For example, Section 20.49.070.A. (Permit Required) restates the

requirements, and stating them in two places seems unwise: at best the statements are consistent, at worst they contradict each other.

- **C. Exempt Facilities.**

- Paragraph 2 seems to refer to a subset of the items that are, or should be, regulated by the code section referred to in paragraph 1.
- The reference in paragraph 3 seems to be to Chapter 2.20 of the NMBC, rather than to Title 2 in general (most of which doesn't have to do with emergencies).

- **D. Other Regulations.**

- Does "Notwithstanding" mean the same as "In addition to"?
- Three numbered clauses in the existing Section 15.70.020.D have been removed. Two of them are probably subsumed in the new "E. Regulations not in Conflict or Preempted," but the reasons for no longer requiring compliance with "3. Easements, covenants, conditions or restrictions on the underlying real property" are less obvious. The City has a reluctance to enforce covenants as expressed in Chapter 20.10.C.1, but that reluctance to check compatibility should not necessarily apply to wireless proposals, where the applicant is rarely the landowner.

20.49.030 – Definitions.

General comments:

- Again, the wireless-related definitions might more logically be placed in the "W" section of Chapter 20.70 (Definitions). The City of Riverside does this nicely in Section 19.910.240 of their Municipal Code where they have a subsection of "W" devoted to "*Wireless telecommunication facilities*" with the header explaining, among other things, "*The following definitions pertain to the regulation of telecommunications uses.*" They have also, unlike Newport Beach, inserted their sign-specific definitions in the "S" section with entries such as "*Sign, spandrel.*"
- Many rather poor definitions have been copied over from the existing wireless code. Many other ones really could be cleaned up.

Specific comments:

- **Antenna.**

- This definition is confused and circular, with "antenna" being included as an example of an antenna.
- It seems, intentionally or not, to include the handheld cell phone at the consumer end of the transaction.

- “Electromagnetic waves” includes light as well as radio- or microwave-frequency emissions, so the definition would seem to include, probably inadvertently, such things as a laser surveying system, or even an ordinary light.

Some examples from other cities:

- “Antenna, Antenna Array, Wireless Antenna Array, or Wireless Telecommunications Antenna Array.” One or more rods, poles, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, that may include omni-directional antennas (whip), directional antennas (panel), and parabolic antennas (disc), but excluding any support structure as defined below.
- “Antennas” - Any system of wires, poles, rods, reflecting discs, dishes, flat panels, or similar devices, including “whip antennas”, attached to a telecommunications tower, mast or other structure, which in combination with the radio-frequency radiation generating equipment associated with a base station are used for the transmission or reception of electromagnetic waves.
- 1. “Antenna” means a device or system of wires, poles, rods, dishes or other devices of similar function, used for the transmission and/or reception of radio frequency signals for wireless communications, as described in the Telecommunications Act of 1996. It may include an omni-directional antenna (“whip”), a directional antenna (“panel”) and parabolic antenna (“disc”). It does not include the support structure. 2. “Antenna Array” means a set of one or more antennae.
- **Antenna Array.**
 - This is a particularly inscrutable definition constructed out of inscrutable phrases, especially since our definition of “antenna” includes “arrays.” The very concise definition of “Antenna Array” in “2” above seems better.
- **Antenna Classes**
 - As it stands this seems a purely circular definition.
 - A reference to proposed Section 20.49.050.A (where the “classes” are actually defined) would seem helpful.
- **Distributed Antenna System, DAS.**
 - I thought a DAS was a system of small, low-power, closely spaced antenna stations. Does the reference to “third-party” mean it does not qualify as a DAS if it is built and operated solely for the benefit of the installer?
- **Feasible.**

- Should the definition include economic factors?
- **Stealth or Stealth Facility.**
 - False trees have been deleted, probably intentionally.
- **Utility Tower.**
 - It is unclear why a steel pole is regarded as a “tower.” Why would the material matter?
- **Wireless Tower.**
 - The intent of the reference to DAS is unclear. In the example, does it matter if the antenna added is DAS or some other kind?

20.49.040 – Available Technology.

- It was unclear under the old code, and remains unclear why this clause is not included in Section 20.49.020 (General Provisions).

20.49.050 – Location Preferences

- **A. Preferred Locations**
 - **Class 2 (Collocation)**
 - It is unclear why the spelling “*co-located*” is used in preference to “*collocated*.”
 - My reading of this definition is that a completely unscreened facility is Class 2 provided the facility to which new features are added was originally unscreened. It is unclear why this would be a preferred over more numerous but less visible installations.
 - Reading further through the code I’m not sure “collocation” should be a “class” at all. In other parts it sounds like it is a construction technique that could be applied to any one of the other classes.
 - **Class 3 (Visible)**
 - “*a cylindrical Antenna unit that replicates the diameter and color of the pole or standards*” sounds like it might be Class 1, certainly if it was incorporated into the normal length of the pole.
 - **Class 4 (Freestanding Structure)**
 - This class seems to encompass a wide range of structures, some of which are much more obtrusive than others.

- **Class 5 (Temporary)**
 - The meaning of “*such placement of a temporary Telecom Facility shall not exceed 1 year, consistent with Section 20.52.040*” is less than clear since Telecom Facilities are not mentioned in Section 20.52.040. Does this mean that even though not mentioned there, the procedures of Section 20.52.040 with a time limit of less than 1 year?
- **C. Installations in the Public Right-of-Way.**
 - “*Any pedestal meter required for the purpose of providing electrical service power.*”
 - Has this exception been made obsolete by Southern California Edison’s conversion to “SmartMeters” which do not need to be physically read by a technician?
 - “*Any proposed installation in the public right-of-way shall comply with all requirements of the Americans with Disability Act (ADA), and all other laws, rules, and regulations.*”
 - Isn’t this redundant with the catch-all clauses in Section 20.49.020 (General Provisions, paragraphs D and E)?
- **D. Collocation Installations**
 - In my view this section should be discretionary rather than mandatory. That is, it should say “***may*** be required to collocate” rather than “***shall*** be required to collocate.” There is no one-size-fits all solution. Ideally the desirability of collocation versus separate installations should be worked out during the public hearing, but the decision has to be made early in the approval process.
 - **Condition Requiring Future Collocation**
 - If the preceding section is mandatory, this seems redundant with it – that is *all* approvals would implicitly include this condition.

20.49.060 – General Development and Design Standards.

- **A. General Criteria.**
 - “*For an example, where a streetlight standard is replaced with a different streetlight standard to allow for the additional installation of Antennas, the primary use shall remain as a streetlight.*”
 - It is unclear if this is meant as a definition or a design directive.

- The definition of “Wireless Tower” in Section 20.49.030 implies no size or amount of antennae can ever cause a streetlight to become a wireless tower?
- Does this mean there *is* some threshold at which that would happen, and it is to be avoided?
- If so, should it be elaborated in one of the listed standards? Or is it already implied in “Blending”?
- Apparently this is meant to be read similarly to the explanation of *Screening Standards* in paragraph 20.49.060.F.3.c (“*compatible in scale and proportion to streetlights and traffic control standards and the poles on which they are mounted*”) but the tie-in is not immediately obvious to me.
- **B. Public View Protection.**
 - As previously indicated this is a major step back from the present code which protects *both* private *and* public views, and not just from the few (and somewhat arbitrarily located) starred spots on the General Plan map.
 - Although the Zoning Code generally shuns private view protection it is not unprecedented. For example commercial loading docks and roof-mounted equipment are supposed to be screened from view from adjacent residences. And more importantly, the telecom applicant is not normally a landowner restricted to construction on a particular parcel of property
- **C. Height**
 - The reminders about other codes (such as Section 20.30.060.E and 4 U.S.C. § 1) are helpful, but probably redundant with the catch-all applicability of all other codes in Section 20.49.020 (General Provisions).
 - **Maximum Height.**
 - Since the definition of Telecom Facilities in Section 20.49.030 includes the whole shebang (including the antennas, the support structure to which they are attached and even the land on which it sits) the reference to “Telecom Facilities” at the start of each lettered paragraph is at best confusing. I think what is being regulated is the height at which *antennas* (rather than *Telecom Facilities*) can be installed.
 - Lettered paragraph “b” may need some words to clarify how it relates to paragraph “a” – which it is possibly meant to supersede?

- The references to 24 and 20 inches in lettered paragraph “c” are less than clear. They seem to be an attempt to describe the flagpole rather than the “facility,” and I’m not sure how “at the top” is to be interpreted. My recollection is cellphone “flagpoles” frequently have an enlarged cylindrical section near the top (housing the antennas) with a small decorative element above that.
- **Over-Height Buildings or Structures**
 - Stealth Telecom Facilities can evidently be of Class 1, 2 or 4? Exactly how that and “the type of installation” are to affect the review seems vague.
- **D. Setbacks**
 - The reference to “*installed on public property or private property*” seems unnecessary. What other kinds of property are there?
- **E. Design Techniques.**
 - This subsection may have absorbed the protections of private views in the existing code, but whether it is intended to include consideration of private views or not is unclear.
- **F. Screening Standards.**
 - Class 3:
 - “*No cables and mounting brackets or any other associated equipment or wires shall be visible from above, below or the side of the Antennas.*”
 - This sounds good, but may be unrealistic. I don’t recall ever seeing an installation with visible antenna panels in which the mounting brackets and cables were not at least partially visible.
 - “*Antenna installations on existing or replacement streetlight poles, traffic control standards, or Utility Poles shall be screened by means of canisters, radomes, shrouds other screening measures whenever Feasible..*”
 - Large canisters and “radomes” added on top of streetlights and other poles are not necessarily less obtrusive or obnoxious than “exposed” antennas mounted flush to the pole. It is not at all obvious why they would be preferred.

20.49.070 – Permit Review Procedures.

- **A. Permit Required.**
 - ***“Table 4-1 Permit Requirements for Telecom Facilities”***
 - The index to the existing Zoning Code indicates Title 20 already contains a ***“Table 4-1 Animal-Keeping Standards”*** and a ***“Table 4-2 Required Setbacks for Structures Housing Domestic Farm Animals.”*** It would appear that if the proposed code is placed in Part 4 this table will need to be renumbered.
 - Note “a” where it says *“depending on the type of installation and Antenna Class being proposed for the Collocation”* is confusing. I thought a collocated installation was by definition Class 2.
- **B. Application Submission Requirements for Telecom Facilities on City-owned or City-held Trust Properties.**
 - It should be clearly stated that authorization by the written authorization from the City Manager does not guarantee that a lease for use of the property will ultimately be granted by the City Council.
- **H. Required Findings for Telecom Facilities**
 - **1. General.**
 - The term *“review authority”* is used frequently in the proposed code. This seems to be where it is defined. However it is defined by reference to Table 4-1, and that table is less than clear as to who or what the review authority is in most cases.
 - The proposed findings are substantially different from the ones the City Council would currently have to make under Section 15.70.070.F.3.
 - The basic requirement that the facility is needed to provide service seems to be missing. Such a requirement is permitted by case law and needed to prevent an unnecessary proliferation of facilities.
 - The proposed findings seem to preclude placement in parks or on public facilities, since such an application would have to be denied if any other alternative is feasible. Since the City might want the revenue in preference to installation on a nearby private building, the logic behind this is unclear.

20.49.090 – Agreement for Use of City-Owned or City-Held Trust Property

Although outside the scope of the proposed code, I believe, as previously stated, that there is a problem with the procedure of approving the leases formulated by the City Manager and City

Attorney for commercial use of public property as current described in Council Policy L-23 (The Siting of Wireless Telecommunications Equipment on City- Owned Land). The agreement is “approved” by *lack of action* on the part of the City Council, which I believe is inconsistent with both the City Charter and the Brown Act. In addition Policy L-23 will require revision because it currently refers to Chapter 15.70 (which is proposed to be repealed) and to provisions in Title 13 that were never implemented.

20.49.100 – Modification of Existing Telecom Facilities.

- The reference under the definition of “Substantially change” to February 22, 2012 seems oddly stated, and might seem to have the effect of making the following criteria inapplicable to a facility that did not exist on that date?

20.49.120 – Right to Review or Revoke Permit.

- The transplanting of this section from Section 15.70.090 does not seem to have been entirely successful since it no longer explains all the circumstances under which the City reserves the right to review or revoke the permit.

20.49.130 – Removal of Telecom Facilities.

- **B. Abandonment.**
 - I have no problem with reducing the period from 180 days to 90 days, but the reason for doing this is not explained in the staff report.

Omissions

In addition to lack of clarity regarding the minimization of impacts on private properties, the proposed code omits important *Submission Requirements* currently found in Section 15.70.070. These included **the justification for the project, maps (including ones illustrating current and proposed coverage), visual simulations (including ones showing impacts on nearby residences), emission data, wind load calculations and evidence of permission to use property**. I don’t know if some of this may be required for use permits in general, but much of it seems wireless-specific and it is very difficult to see how the reviewing authorities could make an intelligent decision about the application without this information.

Finally, I think the proposed code would benefit from comparison with how wireless applications are handled by other California cities. I suspect that beyond the clearer definitions cited above, there are many concepts and specific provisions that could be usefully incorporated.